

VOLUME III  
TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1964

No. 292

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THE ATLANTIC REFINING COMPANY,  
PETITIONER,

vs

FEDERAL TRADE COMMISSION.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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PETITION FOR CERTIORARI FILED JULY 17, 1964  
CERTIORARI GRANTED DECEMBER 14, 1964

No. 292

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In the

United States Court of Appeals  
For the Seventh Circuit

No. 13340

THE ATLANTIC REFINING COMPANY,  
*Petitioner,*  
vs.  
FEDERAL TRADE COMMISSION,  
*Respondent.*

Petition to Review and Set  
Aside Order of the Fed-  
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GEORGE PAUL MASEYKO was thereupon called as a witness for Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Thompson.*

Q. Would you be kind enough to give your full name, please?

A. George Paul Maseyko.

Q. Where do you live?

A. 98 North Street, Johnson City, New York.

Q. Is Johnson City one of the so-called "triple cities" around Binghamton?

A. That's right.

Q. The other being Johnson city?

A. Endicott.

Q. The three are Endicott?

A. Endicott, Johnson City, and Binghamton.

Q. Thank you. Are you an Atlantic Refining Company lessee?

A. Yes, sir, I am.

Q. Where is your station, Mr. Maseyko?

A. 225 Front Street, Binghamton, New York.

Q. How long have you been at that station?

2880 A. Twenty-four to twenty-five years.

Q. Since about 1935?

A. That's right.

Q. For the first few years I believe you had somebody as a partner with you?

A. Yes, there were originally three of us, and then two, and finally myself.

Q. Since about 1938 you have been the sole operator of the station?

A. That's right.

Q. And sole lessee?

A. That's right.

Q. And before you became an Atlantic lessee operator of a service station, do I correctly understand that you served in the United States Navy?

A. That's right.

Q. Now, of course, you have a three-year lease for your station?

A. That's right.

\*Q. And this would be your second three-year lease?

A. I believe so. At the present time, I might clarify that, I have renewed this lease which went into effect this month. I have taken in a partner who is my brother.

Q. I understand, sir, that when you retire you plan to turn the station over to your brother?

2881 A. That's right.

Q. Before 1951, were you handling primarily Lee tires and Exide batteries at your station?

A. Yes, I believe so.

Q. Do you recall that in 1951 or about then, Atlantic dropped the direct marketing of TBA and began to sponsor the Goodyear plan?

A. Yes, I remember.

Q. Do you recall going to dealer meetings in 1951, about the time of the change over?

A. Yes.

Q. And again in 1952?

A. Yes.

Q. Could you tell us in your own way, generally, what happened at those meetings?

A. Well, Goodyear had sponsored a dinner in this particular instance at the Arlington Hotel and they were explaining their TBA deal to the dealers.

Q. Were Atlantic representatives present?

A. Yes, sir, they were.

Mr. Kelaher: Excuse me, is this the first meeting, counsel?

Mr. Thompson: I asked him about 1951.

Mr. Kelaher: Oh.

2882 By Mr. Thompson:

Q. Was the program explained to you not only by Good-year but also by Atlantic?

A. Yes, sir, it was.

Q. Was it made clear to you this was a voluntary program so far as the dealers were concerned?

A. Yes, sir, the dealers could take it or leave it.

Q. Now, after Atlantic had explained the program, did you or did you not decide to try the Goodyear line of TBA?

A. Yes, sir, I did.

Q. Have you since 1951 used Goodyear tires as your primary tire line?

A. It is my primary tire line.

Q. And you purchase, I believe, anything else your customers want?

A. Anything they want, I will buy.

Q. Would you explain to us in your own words why you have continued to handle the Goodyear tires?

A. Well, I think probably the easiest is my mark-up is a little better. My discount on the Goodyear tire is a little better than I can get off competitors and it has a public acceptancy, that is, in my local area.

Q. Do you find the Goodyear tire easy to sell?

A. Yes, I do.

Q. How about batteries, Mr. Maseyko, what lines 2883 and brands of batteries have you been carrying since 1951?

A. Well, I handle Goodyear primarily, but I have sold also Auto-lite.

Q. Do you stock Auto-lite batteries?

A. Occasionally, yes.

Q. How about accessories, from whom do you buy accessories?

A. Well, that would cover just about every wholesaler in town.

Q. In other words, you buy from a large number of sources?

A. It depends on how my stock varies at that particular instant.

Q. Could you name some of your suppliers?

A. Well, Whipple's Automotive, Rose Units, United Auto, and Binghamton Auto Parts.

Q. Are these non-Goodyear accessories openly displayed at your station?

A. Yes, sir, they are.

Q. So they are visible to anyone?

A. That's right.

Q. Do you have a Bowes decal at your station?

A. Yes, sir, I do.

Q. Why do you have a Bowes decal, do you carry Bowes products?

A. It is more or less for tubeless tires. I have carried Bowes products, yes.

Q. What kind of battery charger do you use?

A. Exide.

Q. Does that have the Exide name on it?

2884 A. Yes, it does.

Q. And all these things are visible to the Atlantic salesmen when they come to your station?

A. They sure are.

Q. Do you sell TBA on the Atlantic credit cards?

A. Yes, I do.

Q. Do you sell TBA regardless of the brand, on the Atlantic credit cards?

A. Yes, yes, sir.

Q. That is, you sell non-Goodyear TBA on the Atlantic credit cards?

A. Oh, yes.

Q. When you turn your charge slips in to Atlantic, do you mention any brand on the charge slips?

A. It is just recently I have ~~I don't know, I have never have heard any brand on the tire, I just have named the size of the tire and price and let it go at that.~~ I have never put any brand on.

Q. How about batteries?

A. Batteries the same way.

Q. Has that been, to the best of your recollection, your continuous practice?

A. That is more or less recently. I can't quite remember back whether I done it all the time or not.

Q. Has Atlantic ever criticized you or commented upon the fact that you charge non-sponsored TBA on credit cards? 2885

A. No, they haven't.

Q. Are you solicited at your station by tire manufacturer's representatives or salesmen other than Goodyear?

A. Yes, I have been.

Q. Do you occasionally buy from them?

A. Yes.

Q. Has any representative of Atlantic ever criticized you for handling Auto-lite batteries or non-Goodyear accessories?

A. No, they haven't.

Q. Have they ever suggested to you that you should not buy them?

A. No, they haven't.

Q. Or told you to hide them?

A. No.

Q. Who makes the decision at your station about what you buy? What brand of TBA you carry?

A. I make my own decisions.

Q. Has Atlantic attempted to force you or press you to buy Goodyear?

A. No, they haven't.

Q. Do you feel free to buy any brand of TBA you desire?

A. Yes, I do.

Q. Do you feel that you could carry Goodrich or Lee or Exide 100 percent at your station without criticism by Atlantic?

2886 A. Yes, I think I could.

Q. Or without danger to your lease?

A. Yes, I believe I could.

Q. Now, your lease has, of course, been renewed many times, has it not?

A. That's right.

Q. Has your TBA purchase practices ever been commented upon on the occasion of a lease renewal?

A. No, it has not.

Q. Do you handle some of your accounts by extending personal credit to customers?

A. Yes, I do.

Q. Have you built up in your neighborhood a large number of customers who reside near your station?

A. Yes, I believe 95 percent of my business is neighborhood business.

Q. Do those people know you well, and do you know them?

A. Yes, I do.

Q. Have you from time to time received offers from competitors of Atlantic Refining Company to take stations of theirs?

A. Yes.

Q. Has any recent example occurred to you?

A. Yes, back there about, might be a year or two ago, Amoco contacted me.

Q. Why do you stick to Atlantic, Mr. Maseyko?

2887 A. Because I am heartily sold on them.

Q. Doesn't Atlantic inspect your station from time to time?

A. Yes, they do.

Q. Do you see the results or discuss the results of the inspection with them?

A. Yes, we do.

Q. Are the TBA brands carried by you ever the subject matter of discussion following inspection?

A. Oh, no, no. Inspection, all it does is more or less, they discuss the cleanliness and the efficiency of the service station.

Q. Then do you have once a year or so, a discussion of your business with the sales supervisor or district manager?

A. Yes, I do.

Q. Is it the purpose of that to try to help you make money at your station?

A. Yes, and I am strongly for this particular type because when I first went in business, now had this thing been instructed to me the way it is today, why, I would be far better off because this shows the dealer where he is missing out on his day-to-day sales with the contact with the public.

It is a very good deal for the younger men today.

Q. Now are you one of the elect in the Binghamton area who was visited by Mr. Lipsky of the Federal Trade Commission?

A. Yes, yes I am.

2888 Q. Do you know why you were selected for that distinguished honor?

A. No, I don't.

Q. Do you recall the interview? Is it clear to your mind?

A. Well, I can recall the particular incident where I was down—I had the old-type service station where we had a grease pit, and I believe my man was sick and I was running the business all alone, and I had been pressured all

day by salesmen and he walked in there; just about the time I am underneath the car, and he wanted to know who I was, and I looked up from underneath and asked him who the hell he was, and I think that is when he told me he was so and so from the Federal Trade Commission. And then I asked him for his credentials and he showed it to me and that is when I come up from underneath.

Q. When you said you were pressured all day from salesmen, were you referring to Atlantic salesmen?

A. No, no, no.

Q. Now, when you say you are pressured from salesmen, do you mean the large number of jobber salesmen who come to see you?

A. Yes, it is these wholesalers of course, have salesmen who call on dealers from time to time, and this particular day happened to be the day that maybe two or three of them had called on me, and one of those days I just wasn't in the mood to talk to them.

Q. You were not in a happy frame of mind?

2889 A. Very much.

Q. Do you remember whether Mr. Lipsky asked you whether Atlantic tried to force you to buy Goodyear products, or words to that effect?

A. Yes, I believe he did.

Q. Do you recall what answer you gave him?

A. Well, the answer that I would give right now, that we weren't pressured.

Q. Did you feel in 1953 you were being pressured?

A. No, I don't.

Q. During the course of the conversation with Mr. Lipsky, did he write down things on a piece of paper?

A. Yes, he did.

Q. When he was through writing things down, did he show it to you?

A. Yes, he did.

Q. Did he ask you to sign the statement?

A. Yes, which I did.

Q. Were the words in the statement his or yours?

A. No, I believe they were his to the best of my knowledge.

Q. Do you recall whether he read it carefully or hastily?

A. Well, after about two hours of Mr. Lipsky I was in a hurry to get rid of him, so it had to be hastily.

Mr. Thompson: Mr. Ingraham, any questions.

Mr. Ingraham: No questions.

2890 Mr. Thompson: Mr. Kelaher?

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Maseyko, I would just like to go over some of the answers you have just given to Mr. Thompson. Before 1951, before Atlantic began to sponsor Goodyear TBA, you stocked Lee tires, is that correct?

A. That is right.

Q. Did you stock them exclusively?

A. That's right.

Q. Did you stock Exide batteries exclusively?

A. Yes, I believe so.

Q. Now, you weren't asked—

A. (Interposing.) Excuse me, you are referring to stocked exclusively. There would be occasions where a customer would want a tire other than the Lee or a battery other than an Exide that I would go out and buy through a wholesaler. Exclusively my stock in service station was Lee and Exide.

Q. What other brands would you go out and buy?

A. Well, for instance, there would be the Willard battery or the Delco battery, or the Firestone tire, or the Goodrich tire, whatever the party would want.

Q. Then after Atlantic began to sponsor Goodyear TBA, what brand of tires and tubes did you carry?

A. After Atlantic sponsored Goodyear?

2891 Q. In 1951.

A. Goodyear.

Q. And you stocked Goodyear tires and tubes exclusively, right?

A. Well, yes.

Q. Now, with respect to your batteries. After Atlantic entered into the Goodyear TBA program, what batteries did you begin to stock?

A. I handled Goodyear batteries and on occasion I handled Auto-lites.

Q. Did you stock Goodyear batteries exclusively?

A. Yes.

Q. So that your sales of Auto-lite were just sporadic, is that right?

A. Yes.

Q. Now, on your accessories—let me ask you this first: When Atlantic was sponsoring Lee-Exide, they also had a line of accessories in their program, as you will recall, and at that time, were you purchasing accessories through the Atlantic program prior to 1951?

A. Off and on, yes.

Q. Now, after Atlantic began to sponsor Goodyear TBA, about March 1951, from whom did you purchase your accessories?

A. Well, it could be from a number of them. It was from Goodyear, of course, and then there was Whipple's Rose Units, United Auto, and Binghamton Auto.

2892 Q. And what percentage of your accessories were purchased from Goodyear, that would be the Goodyear service stores, is that correct?

A. That is right.

Q. That is located in Binghamton?

A. Yes. Well, I am guessing roughly there, at the

present time, I would say between 40 and 50 percent of the accessory line..

Q. And the balance is—

A. (Interposing.) From the other.

Q. (Continuing.) —is distributed among the other jobbers?

A. That's right.

Q. So, you were practically Goodyear right down the line in TBA!

A. Let me put it this way, you have to understand a little about this Goodyear deal before we get too far.

Q. I am not asking you that.

Mr. Thompson: Let him answer the question.

Mr. Kelaher: I just asked him if he were not, he has testified tires, batteries,—

The Witness: (Interposing.) I would like to state the reason that I am a Goodyear man.

By Mr. Kelaher:

Q. I haven't asked you that yet, but I will if you just give me time.

2893 A. At the present time, I do buy Goodyear products.

Q. Right. Now, what type of service station identification did your station have when you were carrying Lee, Exide products?

A. Just what do you mean by "what kind of identification"?

Q. I am referring to signs.

A. I had Lee Tire signs out and I had Exide Battery signs out.

Q. And what happened, if anything, after the Goodyear TBA program went into effect? Did those signs remain there?

A. No. In fact, I believe I took the sign down myself

and used them as a carry-all in my grease pit, and I put up the Goodyear signs.

Q. You say that you yourself put up the Goodyear signs?

A. Well, with the help of the Goodyear salesman, and the Atlantic salesman. I think both was there.

Q. Was your permission asked to put up the Goodyear signs?

A. Oh, yes.

Q. Did the Goodyear driver or anyone make any comments to you at that time about the placing of the Goodyear signs in Atlantic service stations?

A. Well, what do you mean by "comments"?

Q. I am just asking you if there was any conversation that went on at that time between you and the Goodyear driver?

A. Well, I believe that in my particular case, I 2894 asked for a sign to be put on my pole to identify me as a Goodyear dealer.

Q. And at that time was the Goodyear truck going to Atlantic service stations in the area putting up Goodyear identification on Atlantic stations?

A. This might have been prior to that, but of course, the time, it could have happened at the time they were putting these decals in the window.

Q. They were putting them in the windows of all the Atlantic stations, is that what you mean?

A. That's right.

Mr. Thompson: Off the record, please.

Hearing Examiner Kolb: Off the record.  
(Discussion off the record.)

Hearing Examiner Kolb: On the record.

*Direct Examination (Resumed) by Mr. Thompson.*

Q. I simply forgot to ask you a question, Mr. Maseyko. I show you three documents labeled CX 150, CX 206 and CX 207, being letters from Atlantic Refining Company to dealers.

Will you take a look at them and let me know whether you received all of those precise letters or letters substantially the same?

A. (After inspection.) Yes.

Q. Do you recall those letters, sir?

A. Yes, I do.

2895 Q. Did you receive those?

A. That's right.

*Cross-Examination (Resumed) by Mr. Kelaher.*

Q. Now you carried Lee tires and Exide batteries for quite a number of years, did you not, Mr. Maseyko?

A. That's right.

Q. And there was good consumer acceptance for Lee tires and Exide batteries in the Binghamton area, was there not?

A. Yes, but that was through the efforts of the dealers.

Q. Well, regardless of whose efforts they were, there was consumer acceptance there?

A. That's right.

Q. And the road hazard guarantee was a good selling point in Lee tires, was it not?

A. Sure.

Q. And at that time, going up to about 19—well, during the time you handled Lee, were you able to get a better price on Lee tires than you were on other brands of tires, such as Goodyear?

A. Well, I don't believe so. Let me put it this way, I didn't have the opportunity other than when I had the

occasion to buy the tire, I could not do as good as I had done with Lee. I guess that would be right; Lee gave me the better deal.

Q. Lee gave you the better deal?

2896 A. At this particular time.

Q. And your mark-up was higher on Lee?

A. Well, it was at the time.

Q. In 1951?

A. Prior to the Goodyear deal.

Q. Yes. Well, even after the Goodyear deal, weren't you still able to get Lee tires at a lower price than Goodyear tires?

A. Well, that was one of those deals I was a little shy of.

Q. I don't think I understood you.

A. Well, for one reason, there wasn't a distributor in the marketing area at the time; outside of Frank and I didn't know Frank was a distributor, but the tires were to be shipped in from Syracuse, and I didn't like the set-up, so that is the reason I didn't go into it.

Q. I am asking you—

A. (Interposing.) But the price was a little better, yes.

Q. Your answer is "yes" to my question?

A. Yes.

Q. Now, you stated on direct examination, you gave some reasons as to why you began to handle Goodyear TBA and why you continued to handle Goodyear, relating to tires right now. Do you recall that testimony? Do you recall the reasons you gave for wanting or for handling or carrying Goodyear?

A. When was that?

Q. Today, in the answer to a question by Mr. Thompson.

2897 A. Yes, public acceptance, for one.

Q. Yes.

A. And better price.

Q. Was that true? And you just testified that the mark-up on Lee tires about 1951 was better than on Goodyear tires?

A. Now, that again takes a little explanation. That was a one-shot deal, and only a one-shot deal.

Q. What was a one-shot deal?

A. You are getting ahead. Here is a market or here comes Lee's Tire Company that loses a marketing area, and she is trying to come in and build herself back up, so she gives the dealer a one-shot deal, but yet, over the long period of tire buying, I wasn't better off. I was better off with the Goodyear set-up. I am not looking for a one-tire deal, I am not here today and gone tomorrow. I am in the business to stay. It is the only thing I know.

Q. Well, I gather from your answer that what you are referring to is the fact that when Goodyear and Atlantic began to sponsor Goodyear TBA, Lee lost the marketing area, is that correct? Lost the Atlantic marketing area?

A. Well, yes.

Q. And the same thing applied to Exide, did it not?

A. Well, the Exide had a marketing area there, but I just felt I wanted to go along with Goodyear.

Q. So, didn't the fact that Atlantic sponsored 2898 Goodyear TBA influence you to handle Goodyear TBA?

A. Well, I don't think it was the main factor. I think price, wholesale price, that is what I am mainly interested in, is making that extra dollar.

Q. You just testified that you could have obtained a larger mark-up on Lee tires than Goodyear tires?

A. I also said it was a one-shot deal.

Q. When was this one-shot deal given to you? In what year? Was this after Atlantic went over?

- A. Right after I went into the Goodyear line.
- Q. What happened then?
- A. Nothing.
- Q. Did Lee come around?
- A. The salesman come in from Syracuse area and I just wasn't interested.
- Q. He offered you a better price than you got from Goodyear?
- A. Just on that particular one-shot to get the Lee tire in.
- Q. Did he say it was just for a one-shot deal?
- A. That was the deal.
- Q. Was that for a stock of tires?
- A. That is right, an introductory offer, so to speak.
- Q. Now, let me ask you this question: How close are you to the Pennsylvania border? How close is Binghamton to the Pennsylvania border?
- A. I would say in the neighborhood of 15, 18 miles.
- 2899 Q. 15, 18 miles. You are very close to the border up there, as I understand it?
- A. Yes.
- Q. Do you know that Atlantic sponsors Firestone TBA in that area of Pennsylvania?
- A. Yes.
- Q. In Atlantic Service Stations?
- A. Yes.
- Q. Now, if Atlantic had sponsored Firestone TBA in your station, would you have also adopted that program?
- A. If their price was better than Goodyear, yes.
- Q. Well, Goodyear would not have entered into it at that time.
- A. Let's put it—if Firestone was as good as Lee or better, let's put it the other way.
- Q. The chances are you would have gone along with the Firestone recommendation, isn't that right?

A. Well, that is possible, yes.

Q. Now, isn't it true that you at one time attended a meeting of Atlantic dealers who were dissatisfied with the fact that Goodyear tires were being sponsored by Atlantic?

A. Let me put it this way, you have been misinformed. This thing had nothing to do with Goodyear tires.

Q. You did have a meeting though?

A. But it had nothing to do with Goodyear prod-  
2900 net, it only had to do with Atlantic gasoline pricing,

Q. What was that about?

A. In this particular marketing area, which we sometimes refer to as "cut throat alley," Atlantic had lost a dealer. When I say it had lost a dealer, the dealer became dissatisfied, and let's say with Atlantic policy, whatever it was, I don't know, but he had taken his business with him down the street. So Atlantic had taken the station over, which she had done, and in order to meet the competitive price of that station, she had to post a sign, which was all right in that locality, because she was meeting price. But the price was two cents cheaper than it was in my area.

Q. That is, Atlantic was posting the price?

A. Yes. And that was the reason the dealers got together, but that had nothing to do with the Goodyear product.

Q. And as far as you know, you never attended a meeting where Atlantic dealers discussed the fact that they were getting a better mark-up on Lee tires and they had a better guarantee on Lee tires and were dissatisfied with Goodyear tires?

A. Never knew of one existing in the area.

Mr. Kelaher: May we have a minute, your Honor?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

2901 By Mr. Kelaher:

Q. When did you first learn that Atlantic was going to sponsor Goodyear TBA?

A. I think it was directly through a letter that we received.

Q. And did that come before this dealer meeting at the Arlington Hotel which you have referred to in direct testimony?

A. I would think yes, but—

Q. (Interposing.) About that time, and was that dealer meeting attended by all of the Atlantic dealers in the Binghamton area?

A. Yes. That is, within the vicinity of Binghamton. I think it covered a little more than Binghamton itself.

Q. Did it get over to the tri-city area?

A. Yes, I believe so.

Q. Johnson City and Endicott?

A. Yes.

Q. And was that a meeting of the Binghamton district of Atlantic, would you remember?

A. So far as I recollect, yes.

Q. And therefore, were you paid a visit by your Atlantic salesman or other Atlantic personnel with a Goodyear representative?

A. Yes.

Q. And what happened at that time?

A. Well, they discussed the advantages of the Goodyear products, and they discussed the various price situations, and I think that is about what it was.

Q. Did the Atlantic salesman or the Goodyear salesman indicate that they would like to have you start to handle Goodyear TBA at that time?

A. Well, they left it to me whether I wanted it or not. I don't recall whether at that particular instant I bought them or not.

Q. And shortly after, if not then, you bought the program, is that right?

A. That's right.

Mr. Kelaher: No further questions.

Mr. Thompson: I thought you had one further question, Mr. Kelaher. You faithfully promised Mr. Maseyko you would ask him why he was a Goodyear dealer, and you never did.

Mr. Kelaher: I thought we went over that at length.

*Redirect Examination by Mr. Thompson.*

Q. May I ask, Mr. Maseyko, why you are a Goodyear dealer?

A. Because I am thoroughly sold on Goodyear products.

Q. And not only tires, but also batteries and accessories?

A. That's right.

Q. In the meeting of the dealers in which you discussed pricing in the Binghamton area of gasoline, was Mr. Buongiorno present?

A. I believe he was, yes.

Mr. Thompson: That is all, thank you, sir.

2903 Hearing Examiner Kolb: Thank you. You may be excused.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: On the record.

Mr. Gordon: Mr. Wright, will you take the witness stand.

HARRY W. WRIGHT, JR. was thereupon called as a witness for Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Gordon.*

Q. Will you give your full name to the stenographer?

A. Harry W. Wright, Junior.

Q. What is your home address?

A. 1413 Arch Drive, Vestal, New York.

Q. Now before we begin, Mr. Wright, the gentleman sitting at the table—Mr. Thompson is saying a word to him—is Mr. Kelaher. He is the attorney for the Federal Trade Commission. Mr. Kolb is the Examiner, and Mr. Ingraham down here is counsel for Goodyear.

When were you first with the Atlantic Refining Company?

A. I went to work for them as a stock clerk in 1947, I believe.

Q. Did you then go into another branch of the 2904 Atlantic Refining Company at a different type of work?

A. Yes, I was a service salesman, I think it was in 1951.

Q. 1951?

A. Yes.

Q. Do you remember when in 1951?

A. April, I believe it was.

Q. And you continued as a service salesman until when?

A. I think it was in January, January 31—no, January 20 of '53.

Q. Now what area did you work in as a service salesman?

A. I was all over.

Q. When you say "all over" do you mean all over Atlantic's entire marketing area?

A. I was in Liberty, Monticello, Binghamton, Ithaca.

Q. Was it in one district of Atlantic's marketing area?

A. Well, it was more than one district represented there, I believe.

Q. Were you in the Binghamton area to any extent?

A. Most of the time, except on special occasions when I was out of town.

Q. When did you become an Atlantic lessee?

A. In February of '53.

Q. And have you been one ever since then?

A. Yes.

Q. Where is your station located?

2905 A. 1610 East Main Street, Endicott.

Q. Endicott is one of the triple cities of which Binghamton is another?

A. That is right.

Q. What is the term of your lease?

A. At the present time, it is three years, sir.

Q. Now at the time you became a service salesman, do you know what kind of TBA Atlantic was selling?

A. They were handling Lee and Exide. I believe, at one time. Whether I was a stock clerk or salesman, I can't recall which.

Q. Did you attend any meetings as an Atlantic service salesman at which Atlantic TBA policy was discussed?

A. If I did, I don't rightly recall it.

Q. Were you ever in a meeting in Elmira?

A. Not to my knowledge, no.

Q. I show you this document which is marked CX 206, dated April 28, 1952, and headed, "A Restatement of Atlantic TBA Policy" and signed by Mr. Colby. Do you recall receiving that letter?

A. Yes, I do.

Q. Were you a service salesman at the time you received that letter?

A. Yes.

Mr. Kelaher: What was the date of that?

Mr. Gordon: August 28, 1952. CX 206.

2906 By Mr. Gordon:

Q. Do you also recall receiving this letter which is marked CX 207 and dated June 24, 1955? It would have been sent to you by Mr. Ostrander, the regional manager.

A. Yes.

Q. This letter is known as the non-forcing letter.

Mr. Kelaher: Just one question on that. These are addressed to the Atlantic dealers. Wasn't the other addressed to Atlantic Dealers also?

Mr. Gordon: That was also stipulated, Mr. Kelaher, as having been sent to all personnel. This one was addressed to all Atlantic dealers and he has already testified that he became an Atlantic lessee-dealer prior to that date.

By Mr. Gordon:

Q. Prior to the time you became an Atlantic dealer then, you were familiar with Atlantic TBA policy?

A. Yes.

Q. Would you tell me what kind of tires you are now carrying in your station?

A. Goodrich.

Mr. Kelaher: Goodrich?

The Witness: Goodrich.

By Mr. Gordon:

Q. Entirely?

A. Entirely.

2907 Q. What kind of batteries are you carrying?

A. Delco.

Q. Entirely?

A. Entirely. Now I make the stipulation in the event a customer specifies a certain brand, I can get them, but I stock Delco and Goodrich.

Q. Now where do you buy your accessories?

A. Do you want the names of the houses?

Q. Yes.

A. Auto Supply, United Auto, Piersall K. N. W. Tire Service, Whipple's.

Q. Where do you purchase your recaps?

A. From K. N. W. Tire Service.

Q. Are these accessories—do you purchase any accessories from Goodyear?

A. Not in some time, no. I would say it has been over a year now.

Q. Are these tires, batteries, and accessories that you have described, openly displayed in your station?

A. Yes.

Q. What kind of a battery rack do you have in your station?

A. It is a big Delco rack.

Q. What kind of tire repair kit do you have?

A. Bowes.

Q. Are your TBA items on the shelves in your station?

2908 A. Oh, yes.

Q. And your Atlantic salesmen see them?

A. Definitely.

Q. Can anyone else see them?

A. I want to sell them.

Q. Do you sell the TBA you have just described on credit cards?

A. Yes.

Q. Do you indicate the brand name on the credit slip?

A. Sometimes, yes, sometimes, no. I mean, it makes no difference actually.

Q. Has Atlantic ever criticized you for charging non-Goodyear TBA on credit cards?

A. No.

Q. Are you also solicited by other tire suppliers?

A. From time to time, I have been solicited by General and Firestone and Lee.

Q. What is the main reason for your buying the TBA you do?

A. Well, the price is right for one thing, the service, in my thinking, has to be excellent because of my location, and I have to have a product that is well accepted by the public.

Q. How far are you from the Goodyear store?

A. Oh, approximately 10 or 12 miles.

Mr. Kelaher: From which store is that?

Mr. Gordon: Goodyear store.

2909 By Mr. Gordon:

Q. Have you ever been criticized by Atlantic for carrying non-Goodyear TBA?

A. No.

Q. Have you ever been told by Atlantic to stop buying TBA you are buying?

A. No.

Q. Has your Atlantic salesman ever told you to remove the non-Goodyear TBA you carry in your station?

\* A. No.

Q. Has your Atlantic salesman or anyone else from Atlantic ever told you to hide non-Goodyear TBA?

A. No.

Q. Who makes the decisions as to what you buy in the way of TBA products in your station?

A. I make my own decisions.

Q. Do you feel free to buy any TBA you want?

A. Definitely.

Q. Do you feel free to buy TBA from any source you want?

A. Yes.

Q. Do you think that your lease is in jeopardy because you buy non-Goodyear TBA?

A. No.

Q. While you were a service salesman, did you work in a number of Atlantic stations?

2910 A. Yes.

Q. Were those stations lessee stations?

A. Yes, most of them.

Q. Did you have the opportunity to observe on numerous occasions the Atlantic salesman talking to the lessee-dealer?

A. Many times, because we used to double team quite a bit and I was nearby so I could overhear the conversation if I wanted to.

Q. Did you ever observe while you were working in Atlantic stations as a service salesman, Atlantic salesmen or personnel trying to force an Atlantic dealer to buy Goodyear TBA?

Mr. Kelaher: Objection, your Honor, to that question. That calls for hearsay.

Mr. Gordon: That is the same sort of question, your Honor, that Mr. Kelaher has asked so often. I thought he would hardly object to it.

Hearing Examiner Kolb: Overruled.

Mr. Gordon: Would you answer the question?

The Witness: Would you repeat the question again, please?

Mr. Gordon: Would you read the question to him?

(Whereupon, the reporter read the pending question as requested.)

The Witness: No.

By Mr. Gordon:

Q. Mr. Wright, you have had several leases from 2911 Atlantic, have you not?

A. Yes.

Q. Your leases have been renewed two or three times?

A. Yes.

Q. At the time your lease was renewed, did Atlantic ever discuss with you the fact that you were buying non-sponsored TBA?

A. Yes, we discussed it and I explained my problem that I have had with Goodyear on service and deliveries and so on, and I asked the sales supervisor, I said, "Do you blame me?" and the answer is, "Definitely not."

Q. Do you know most of your customers pretty well by their first names?

A. I would say 75 percent of them.

Q. Do you do a substantial amount of business on personal credit?

A. Yes, I do.

Q. Are most of your customers rather regular, repeat customers?

A. Yes, they are all regular customers.

Q. Are there many other oil companies active in your area?

A. Yes, sir.

Q. Have you received offers from any of these companies to go with them?

A. I have been solicited by Amoco and Sunoco.

Q. Are qualified dealers in demand?

A. Very much so.

2912 By Mr. Gordon:

\* \* \*

Q. You are familiar with the fact that Atlantic inspects its stations, aren't you?

A. Yes.

Q. Your station has been inspected, in fact, has it not?

A. Yes, many times.

Q. After these inspections, does Atlantic discuss with you the results of the inspection?

A. They point out the weaknesses, if there are any, and

corrective measures that we might take, and I think it is a good incentive for the men too; it keeps them on their toes, along with myself.

Q. When you say "the men" who are you referring to?

A. The men that work for me.

Q. Are TBA brands ever mentioned in these discussions?

A. No.

Q. Are you familiar with what is called the annual review?

A. Yes.

Q. What is that?

A. Well, to me it means that we sit down and we discuss the past year's business and we analyze the 2913 weak spots in my business, and then try to decide what we are going to do in the following year to correct those weaknesses.

Q. Are they helpful?

A. Very much so. I think we are all lazy at one time or another, and they get us over that hard spot.

Q. Is the fact that you carry non-Goodyear TBA mentioned?

A. Yes, it was mentioned, and we discussed it at length. I told them the reasons for my not buying from Goodyear, and I feel in my own mind that I could sell more tires with Goodyear and it is because of my past experience, well, I have been in business now five years, and I have sold more tires in the past with Goodyear, but I can't sell tires if they won't deliver them to me, and so, I have gone to another supplier for that reason.

Q. Were you visited by an investigator for the Federal Trade Commission?

A. Yes.

Q. Do you recall roughly when that was?

A. Oh, it was latter part of '53.

Q. Did he identify himself to you?

A. Yes, he showed me his credentials.

Q. Did you tell him substantially what you have testified to today?

A. Yes, I believe I did.

Q. Did you sign a paper for him?

A. Yes.

2914 Q. Did you get a copy of what you signed?

A. No, he didn't give me any copy.

Q. Who wrote the statement?

A. He wrote the statement.

Q. Whose words were used in the statement?

A. He used his own words.

Mr. Gordon: Mr. Ingraham?

Mr. Ingraham: No questions.

Mr. Gordon: Mr. Kelaher?

Mr. Kelaher: I have a few questions.

#### *Cross-Examination by Mr. Kelaher.*

Q. Mr. Wright, I would like to review your testimony you have just given here under oath on direct examination and see if we have it correct.

You began the operation of your service station in February 1953, is that correct?

A. That's right.

Q. And as a former Atlantic service salesman, you knew that the Goodyear TBA program had been in effect about two years by that time, did you not?

A. Yes.

Q. Now, you stated on direct examination that you stock Goodrich tires exclusively?

A. That's right.

2915 Were you implying that you have always stocked Goodrich tires exclusively?

A. No, I stocked Goodyear up until, oh, I would say a year ago and at that time, as I have stated before, I had to change because of the service that was made available to me.

Q. So, you stocked Goodyear exclusively, is that correct, up until sometime in 1957?

A. No, I stocked them, and if a person specified another tire, I was able to get those too.

Q. But I am talking about stocking, you do that also with Goodrich, as I understand it?

A. Yes.

Q. But you were stocking Goodyear tires exclusively up until 1957, is that right?

A. Yes.

Q. Now, on direct examination, you stated that you are stocking Delco batteries. Do you mean to imply that you have always stocked Delco batteries?

A. No, up until that time I was handling Goodyear batteries.

Q. So, you did stock Goodyear batteries exclusively until sometime in 1957, correct?

A. That is correct, yes, sir.

Q. Now, with respect to accessories, you implied or you stated rather on your direct examination, that you buy accessories from a number of suppliers. Did you mean to imply that you have never bought accessories from 2916 Goodyear during the entire period of your station operation?

A. No, I bought Goodyear also.

Q. And isn't it a fact that the majority of your accessories were purchased from Goodyear service store?

A. On the accessories, no, I don't believe so.

Q. Up until 1957?

A. No.

Q. What percent will you estimate that you carried up to '57 of Goodyear accessories?

A. 30, 40 percent, I would say.

Q. And the balance was distributed among these other products?

A. Yes.

Q. Isn't it a fact you carried Goodyear fan belts and you also carried other accessories in the Goodyear line on a stocking basis for some time? Isn't that true?

A. Well, they may have been brands handled by Good-year. Doesn't necessarily mean I bought them from Good-year.

Q. You did buy some of them from Goodyear?

A. Some of them.

Q. Are you referring to products like DuPont polishes and so on?

A. Yes.

Q. Is it your testimony that since some time in 1957 you are not buying Goodyear accessories at all, or do you still buy some?

2917 A. I am not buying anything.

Q. Incidentally, as an Atlantic employee and an Atlantic dealer, were you familiar with the fact that the Federal Trade Commission issued a Complaint against Atlantic concerning its sponsorship of Goodyear TBA in January 1956?

A. At that time I wasn't an employee.

Q. You were a dealer at that time?

A. I was a dealer at that time. I may have heard it, but no one came to me and told me about it.

Q. As a matter of fact, you were carrying Goodyear TBA at the time the Complaint was issued in this matter?

A. Yes, I was. At that time, I might say, I had a high feeling and a high respect for Goodyear because they did have a good product. I still think they have a good product.

Their service was excellent and they had, as I say, a good product, but since that time, why things have changed.

Q. What is the problem today, or what was your reason for changing?

A. My reason for changing was service. I would make a call to the store for a specified number of tires, and I had a sale for that tire probably in the afternoon or next day. I was promised delivery, and that was never up-held. They might bring it two days later or three. I don't run my business on promises and I have to fulfill my end of it too, so I had to go to another supplier where I could get 2918 that service. Incidentally, K. N. W. and Goodyear are located practically in the same location in Binghamton. There is not too much difference.

Q. So, it was a problem of service?

A. That's right.

Q. Do you think they were taking your business for granted because you were an Atlantic dealer?

A. No, I don't think so.

Q. Now, what was your original reason for stocking Goodyear TBA?

A. I think I just stated that. I thought they had a good product, they gave me good service, and it was a well-known product, well accepted by the public.

Q. Let me ask you this: Didn't you one time when you started business obtain a loan from Atlantic?

A. Yes, I did.

Q. And what was the amount of the loan?

A. Twenty-seven, twenty-eight hundred, something like that.

Q. Approximately \$2800?

A. Yes.

Q. And what was that loan used for?

A. I don't recall what it was exactly. I had a \$1000 of

my own and I needed \$2800 more to start business, to go into business to function.

Q. Wasn't the total loan approximately \$2800 though?

A. Yes.

2919 Q. Wasn't that the amount of the loan from Atlantic?

A. That's right.

Q. Wasn't that used to purchase the stock of the outgoing dealer, Paul Urban?

A. Yes.

Q. And was the check made by Atlantic payable to Paul Urban for his inventory at that time?

A. I never saw the check.

Q. You never saw the check, so it went directly to Mr. Urban?

A. Yes.

Q. You executed a promissory note in the amount of \$2800?

A. Yes.

Q. And as part of that loan, was your station stocked with Goodyear TBA?

A. That is a long time ago. As I recall, he had a fairly well balanced stock and I don't think I had to replace too much at the time.

Q. And that stock was Goodyear, was it not?

A. There were some Exide batteries, there was some Goodyear batteries. There were Lee tires, and there were Goodyear tires.

Q. What type of service station identification was on the station when you went into the station?

A. It was a Goodyear decal on the front window.

Q. Was the Goodyear sign on the outside pole?

2920 A. Oh, yes.

Q. That was pretty much true of all Atlantic stations in that Binghamton area, wasn't it?

A. Yes.

Q. Now, did you pay interest on that loan?

A. Yes, the first six months the payment was a-half cent a gallon, and the next six months, it was half a cent a gallon plus interest, and then it was for the next two years, a cent a gallon plus interest.

Q. For the first six months no interest was charged?

A. That's right.

Q. And part of that loan was used to equip your station with Goodyear—was it primarily Goodyear TBA?

A. I don't recall. As I say, as I recall it, I think most of it was used for gasoline and motor oil.

Q. And in addition to the TBA which Mr. Urban had on hand, was any part of the loan used to purchase TBA?

A. There might have been some used to bring it up to par, as I say, I don't recall.

Q. Was that money used to purchase Goodyear TBA? I am talking about part of the loan money.

A. No.

Q. None of it was used to purchase TBA?

A. No, I don't believe so. That particular \$2800 went for gas and oil inventory and equipment and I still 2921 had a thousand of my own, I used to spend.

Q. And you used part of your money to purchase TBA, is that right?

A. Yes.

Q. Did you purchase Goodyear TBA at that time?

A. As I say, I don't recall.

Q. Now, you stated on direct examination that you have a big Delco rack in your station. I assume that was not there until about 1957 when you began to handle Delco batteries, is that correct?

A. Yes.

Q. Now, you stated in answer to question on direct examination that there came a time when you were dis-

satisfied with the Goodyear service store's service to your station, is that right?

A. Yes.

Q. Now, didn't you at that time go to Atlantic and discuss the matter with Atlantic personnel?

A. I had discussed it with my salesman, and—

Q. (Interposing.) What was your salesman's name?

A. I have to think back—Ken Goodhart.

Q. Ken Goodhart?

A. Yes.

Q. And why did you think it was necessary to discuss the matter with Mr. Goodhart? Was he the first one you discussed it with from Atlantic?

2922 A. I wanted to get some action on the Goodyear, and I felt that maybe with my trying and maybe all getting together, we could get some action.

Q. And what happened after that?

A. The same thing, nothing.

Q. You had no action. So then did you discuss the matter again with Mr. Goodhart or anyone else in the united organization?

A. No, I don't believe so. I just made up my mind that I had been bit too many times and that was it. I had found a better supplier.

Q. And then at that time, you switched, you changed over from Goodyear to other products?

A. Yes.

Q. Now, thereafter, you had conferences with Atlantic personnel, as I understand your direct testimony, either in connection with the annual review or did you have also other conferences with Atlantic personnel?

A. That was the only one.

Q. That is the one you are talking about? That was the one you were talking about when you referred to dis-

cussions with Atlantic personnel concerning the handling of non-sponsored TBA, is that correct?

A. Yes.

Q. And did you give your reasons to Atlantic personnel why you did not want to handle Goodyear TBA?

2923 A. Yes.

Q. Did you bring up the subject?

A. Yes, I did.

Q. Why did you feel you had to justify your action in handling it?

Mr. Gordon: I object to that.

Mr. Kelaher: Why?

Mr. Gordon: Because you are characterizing the statement, not the witness.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: You may answer.

The Witness: Will you repeat the question?

Hearing Examiner Kolb: Read the question.

(Thereupon, the reporter read the record as requested.)

The Witness: I still feel as I stated before, I think Good-year sells itself through their advertising and public acceptance and if possible, I wanted to continue to buy Good-year, but under the circumstances, It wasn't possible.

By Mr. Kelaher:

Q. Did you feel that as an Atlantic dealer and knowing that Atlantic was sponsoring Goodyear TBA, that you had to justify your reasons for switching to non-sponsored TBA?

A. No.

Q. Well, it must have been a matter of some concern for you to have discussed it with top brass in Atlantic, isn't that true?

2924 A. No, I don't believe so. They had been trying to sell me Goodyear merchandise, and I explained to them why.

Q. Just who was present at this meeting?

A. George Babikian.

Q. And what is his title?

A. Sales supervisor.

Q. In the Binghamton district?

A. Yes.

Q. Who else was present?

A. Trimay.

Q. How do you spell his name?

A. T-r-i-m-a-y.

Q. What is his title?

A. Salesman.

Q. In the Binghamton district?

A. Yes.

Q. He was your salesman?

A. Yes.

Q. Anyone else present from Atlantic?

A. No.

Mr. Kelaher: May I have a minute, your Honor?

Hearing Examiner Kolb: Yes.

Mr. Kelaher: I am ready to go ahead, Mr. Examiner.

Hearing Examiner Kolb: Go ahead.

2925 By Mr. Kelaher:

Q. Mr. Wright, I believe you testified that you had a Goodyear window decal in your station, is that correct?

A. Yes.

Q. Has there been any change in that in your station?

A. No, I tried to take it off one day and I couldn't get it off, so I gave up.

Q. So, now even though you are selling Goodrich tires and Deleo batteries, you still carry Goodyear advertising on your station, is that correct? Service station identification?

A. Yes, I do.

Mr. Kelaher: No further questions.

*Redirect Examination by Mr. Gordon.*

Q. Mr. Wright, did the fact that you were financed by Atlantic have anything to do with the brand of TBA you carried?

A. No.

Q. Prior to 1957 did you feel free to buy any TBA you wanted to?

A. Oh, yes, many times I did, I bought Lee tires or Goodrich tires, Firestone tires.

Q. To carry them and stock them?

A. Not to carry them; if a person specified they wanted them, I got them.

Q. Did you feel free to carry them if you wanted to though?

A. Yes.

2926 Q. And stock them?

A. Yes.

Mr. Gordon: That is all.

*Recross Examination by Mr. Kelaher.*

Q. I want to clear up one thing. Part of the time you were asked on redirect if you felt free to stock any brand of tires or any brand of TBA prior to 1957, and you said "yes." But the fact remains, does it not, that you only stocked Goodyear tires and Goodyear batteries prior to 1957?

A. Yes, that is true, but—

Mr. Kelaher: (Interposing.) That is all.

The Witness: Could I answer that question?

Mr. Kelaher: He can go ahead if he wants to, but he has answered the question.

The Witness: I felt free to do whatever I wanted to. There was no—

Mr. Kelaher: (Interposing.) No further questions.

Hearing Examiner Kolb: Is that all? You are excused.

(Witness excused.)

Hearing Examiner Kolb: The meeting is adjourned until 10:00 o'clock tomorrow morning.

2928 Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: Mr. Wyckoff, will you come over and sit here?

CHARLES P. WYCKOFF, was called as a witness for Respondent the Atlantic Refining Company and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Thompson.*

Q. Would you give your full name, sir, to the court reporter, please?

A. Charles P. Wyckoff.

Q. Where is your residence?

A. 176 Broad Street, Washington, New Jersey.

Q. Washington, New Jersey, not to be confused with the District of Columbia Washington.

Mr. Wyckoff, are you an Atlantic Refining Company lessee?

A. I am.

Q. You operate a service station in Washington, New Jersey, owned by Atlantic Refining Company?

A. I do.

Q. How long have you had that station, sir?

A. I went in November, 1942, that would be—

2929 Q. (Interposing.) That is about 17 years?

A. That's right.

Q. You had a three-year lease, sir?

A. Beg pardon?

Q. You have a three-year lease?

A. Yes.

Q. I believe that is your second three-year lease?

A. It is.

Q. Before you became an Atlantic lessee, did you at one time have an Esso station?

A. I did.

Q. So that you came to Atlantic with prior experience in the service station business?

A. Yes.

Q. What type of trade do you have at your station? Is it a community station?

A. Yes, very much. I am on a highway that isn't—well, it is the main highway, but not like some of these super highways. I have to depend mostly on local trade.

Q. Is a large percentage of your trade derived from inhabitants of Washington, New Jersey and the surrounding area?

A. That's right.

Q. Do you do any of your business, sir, on personal credit? Do you extend credit to some of your customers?

A. Yes, some personal, and mostly local business concerns.

2930 Q. Have you gotten to know your customers well and do they know you well?

A. Oh, yes.

Q. Do you recall that about 1950, Atlantic ceased selling Lee tires and Exide batteries and commenced to promote the Goodyear TBA line?

A. Yes.

Q. Do you recall whether you did or did not attend a meeting of dealers in 1950 at which the Goodyear program was to be explained?

A. I did not attend, I was sick at the time.

Mr. Thompson: If your Honor please, it is stipulated between Mr. Kelaher and myself that Mr. Wyckoff received and recalls receiving the so-called non-forcing letters, Exhibits 206, 207, and 150.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: I might say, Mr. Kelaher, I verified that information with this witness just before he went on the stand.

Mr. Kelaher: Right.

By Mr. Thompson:

Q. When Atlantic started to promote the Goodyear TBA line, did the Atlantic salesman try to sell you 2931 on the idea of switching from Lee and Exide?

A. He mentioned it, yes, said that they were going to handle Goodyear line, but I told him that inasmuch as my trade was local and I had previously built up a big trade on the product that I was handling, I didn't feel that I could change it at that particular time.

Q. So that you did not change to the Goodyear line?

A. Not wholly, no. I did take on a few tires, but never the complete line.

Q. Was there any effort on the part of Atlantic to force you to change to Goodyear?

A. No.

Q. By the way, sir, who is your present salesman, Atlantic salesman?

A. Robert Carlson.

Q. C-a-r-l-s-o-n?

A. Yes.

Q. Since 1951, what has been your primary tire line?

A. Tire line?

Q. Yes.

- A. About 95 percent Lee.  
Q. Do you also handle a few Goodyear tires?  
A. I have a few, yes.  
Q. What is your reason for carrying a few Goodyear tires?

A. Mainly if some transit trade should stop in 2932 and they insisted on Goodyear, well, I would have it. That is all, just to satisfy the transit trade.

- Q. Do you find from the point of view of the transit trade, Goodyear is a better known brand than Lee?

Mr. Kelaher: Objection, your Honor. I have no objection to leading in the many instances, but if we are going to get into consumer acceptance and things of that kind, I think it would be better to ask the witness.

Hearing Examiner Kolb: I will overrule the objection at this time.

Mr. Thompson: You may answer the question.

The Witness: Would you mind please repeating the question?

(The reporter read the record as requested.)

The Witness: It might possibly be a better known product for the transit trade, but on the other hand, I have sold plenty of Lee tires to transit as well.

By Mr. Thompson:

- Q. What brand batteries have you been carrying since 1951, sir?

A. Exide.

Q. Exclusive Exide?

A. That is correct.

Q. And from whom do you purchase accessories?

A. Oh, I purchase them from different jobbers. Do you want to name the firms?

- 2933 Q. I would appreciate if you would name some of them.

A. Well, the batteries come from Allentown Wholesale; I deal with Way Brothers, that is in Allentown, and then I deal with Way Brothers in Easton; Washington Auto Parts in Washington, Sea Automotive in Washington, and I buy some from Whelan Brothers who are the Goodyear representatives, they are jobbers in that territory.

Q. Do you have a business reason for dealing with a number of accessory suppliers?

A. Yes, I do. In as much as I was a dealer through the War, I was really handicapped in getting supplies a lot of times, and I made a statement at that time that I wouldn't be caught again, not with all my eggs in one basket, so that is the one reason why that I deal with different dealers because I can get various products from different jobbers.

Q. By the way, sir, what kind of hose do you carry?

A. Gates.

Q. Do you have a Lee tire rack at your station?

A. I do.

Q. Do you have any battery signs around your station?

A. I do, I have an Exide sign right on the fence.

Q. Now, of course, sir, these Lee tires and Exide batteries are openly displayed so that everybody who comes to the station sees them?

A. That is true.

2934 Q. Do you recall, sir, that I dropped in at your station with Mr. Gaestel and Mr. Carlson a few weeks ago and paid you a short visit?

A. That is true.

Q. And all of these tires and batteries and non-sponsored accessories were clearly and openly visible to everybody including me, were they not?

A. That is right.

Q. Do you sell these non-Goodyear tires and batteries and accessories on Atlantic credit cards?

A. I do.

Q. Have you always done so?

A. Yes.

Q. Has Atlantic ever criticized you for doing that?

A. No.

Q. Or suggested in any way that you shouldn't?

A. No.

Q. Approximately what percentage of your business at your station is done on Atlantic credit cards?

A. Oh, roughly, I would say 25 to 30 percent.

Q. During these years that you have been carrying Lee tires and Exide batteries and non-sponsored accessories, has Atlantic ever criticized you for so doing?

A. No.

Q. Have they ever told you to stop buying them?

2935 A. Never.

Q. Or to get them out of your station?

A. No.

Q. Have they ever tried to force or pressure you into buying Goodyear TBA?

A. No..

Q. Now of course, you know your salesman, Bob Carlson?

A. Beg pardon?

Q. Of course, you know your salesman, Bob Carlson?

A. Oh, yes.

Q. Do you know him well?

A. Yes.

Q. Does he come to see you frequently?

A. Yes.

Q. About how often?

A. Once a week, every two weeks at the most.

Q. How about Bill Gaestel, do you know him?

A. Yes.

Q. What is his position with Atlantic?

A. Assistant manager, I believe, or manager.

Q. I think actually sales supervisor, sir, in his official title, but you know him as Bob Carlson's boss?

A. That is correct.

Q. Does he come to see you?

A. Yes.

2936 Q. Do you know the Atlantic district manager in Northern New Jersey?

A. Yes.

Q. What is his name?

A. Geer Leshi.

Q. G-e-e-r, isn't it?

A. I believe so.

Q. Does he come to see you occasionally?

A. Possibly once or twice a year he drops in.

Q. Now in the 17 years that you have been an Atlantic lessee, you, of course, have had your lease renewed many times?

A. That is true.

Q. Have you ever had any problem at all about lease renewal?

A. No.

Q. On the occasion of lease renewal, has the fact that you do not handle Goodyear TBA been adversely commented upon?

A. No.

Q. Have you been criticized for it?

A. Not at all.

Q. Are there a lot of companies other than Atlantic which have service stations in your general marketing area?

A. Yes.

Q. Did Esso try to get you to leave Atlantic and go with them?

A. Well, being an Esso dealer in the beginning, and

then there was an opportunity two or three years ago  
2937 that the salesman approached me to take over that  
particular station, and I told him I wasn't interested  
whatsoever.

Q. Why did you stick with Atlantic, Mr. Wyckoff?

A. How was that?

Q. Why did you stay with Atlantic?

A. I don't know; I just like it, that's all. I like their  
products, I think I am sold on them; and that is the reason  
I stayed with them.

Mr. Thompson: Now, Mr. Wyckoff, the gentleman on  
my right, Mr. Kelaher, represents the Federal Trade Com-  
mission. He may have some questions he wants to ask you.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Wickoff, I think we ought to get some informa-  
tion about Washington, New Jersey into the record.

What is the population of Washington, New Jersey?

A. Well, at the present time, it is around 5200, I believe.

Q. And how far is that located from Newark, New  
Jersey?

A. Around 45 miles, I believe.

Q. It is quite a distance from the heavy populated met-  
ropolitan Newark area, is it not?

A. Yes.

Q. And how many other Atlantic service stations are  
in Washington, New Jersey?

A. One.

Q. One other station?

2938 A. One other station.

Q. Who is the operator of that station?

A. Dick Robowitz. Don't ask me to spell it.

Q. And where is his station located?

A. His station is on the circle on the junction of Route  
24 and 69.

Q. That would be east of your station?

A. East, yes.

Q. And your whole area there is just you and one other Atlantic dealer?

A. Yes, we are about five blocks apart.

Q. About five blocks apart. Did the other Atlantic dealer go along with the Goodyear program?

A. I don't know.

Q. You don't know?

A. No.

Q. You are just five blocks apart and you don't know?

A. I stay on my end of town and he stays on his.

Q. You can't say whether he did or didn't?

A. I could not.

Q. How far are you from the town of Phillipsburg, New Jersey?

A. Twelve miles.

Q. Twelve miles. And there are Atlantic dealers in Phillipsburg, New Jersey, are there not?

A. Yes.

2939 Q. Approximately how many?

A. Two on the Memorial Parkway and one on South Main Street that I know of. There may be others, I don't know, but those are the three I know of.

Q. About three. Do you know whether they went over to Goodyear TBA program when Atlantic did?

A. I don't know.

Q. You were asked about a meeting of the Atlantic dealers in 1950. Where was that meeting held?

A. I believe it was in Newark.

Q. You believe it was in Newark?

A. Yes.

Q. That would have been quite a long trip for you. You say you were sick!

A. I was sick for about six months.

Q. Do you handle a large volume of tires, overall tire volume?

A. Do you want to know—

Q. (Interposing.) Just like your stock. What would your stock be?

A. I carry between 70 and 80 tires at all times.

Q. At all times, and including that stock are some Goodyear?

A. Some are Goodyear.

Q. Is it possible that you carry some Goodyear tires to stay on friendly relations with Atlantic to some extent?

Is that the reason?

2940 A. Well, I don't know. Possibly I buy them—if they sold any other brand, I would possibly buy that, but—

Q. (Interposing.) In other words, if they were sponsoring Firestone in your area, you would probably stock Firestone, isn't that correct?

A. Well—

Q. (Interposing.) It is a means of maintaining good relations?

A. Well that, and possibly to satisfy any transit trade. If someone comes in and if they ask about Goodyear or Firestone or what have you, why I say, "Well, I carry Goodyear."

Q. And of course, you are not too far from Easton, Pennsylvania, are you? You are only about 14 miles from Easton!

A. That's right.

Q. And do you know that Atlantic sponsors Firestone TBA in that area?

A. Yes.

Q. You do; and you know it is the Atlantic service stations over in that area with Firestone identification all over them?

A. Yes.

Q. And the same is true of Allentown, Bethlehem, up through the whole Lehigh Valley, is that right?

A. Yes.

Q. On your side of the river you find Atlantic stations with Goodyear identifications on them, isn't that correct?

A. Yes.

2941 Q. That seems like something of an unusual situation, doesn't it?

A. Yes.

Q. You say it does.

Mr. Thompson: Is that a question or statement?

Mr. Kelaher: I asked him.

T. Witness: I don't know why it is that way. I never asked any questions in regard to why Pennsylvania would be one brand and New Jersey another. I never asked questions.

By Mr. Kelaher:

Q. Right: You were asked a question about your salesman, Bob Carlson. How long has he been calling on you?

A. Oh, I would say four years, approximately, possibly five.

Q. Possibly five?

A. Four or five years, I don't know exactly.

Q. And has Mr. Gaestel been calling on you for a longer period or shorter period?

A. Well, I believe he—yes, he did call on me after the Newark territory took over; that is when I first met Mr. Gaestel.

Q. When did the Newark territory first take over in that area?

A. Along in '51, I guess.

Q. About '51? There are references in the record to a Newark district and a Newark, Jersey district. Are

you in the Newark district or is it the same thing, or two different names for the district?

2942 A. I don't know, I have all my dealings with Newark.

Q. All your dealings with Newark and it wasn't until 1951 that was the situation, is that correct?

A. Around that time.

Q. Before that where did you have your dealings?

A. Allentown.

Q. You were so close to the Pennsylvania line, that it was natural for you to deal with Allentown than with Newark?

A. I guess so, there was just a small section in that corner of New Jersey that was under Allentown when this change over came. Newark took over that territory.

Q. Are you talking about the change over to Goodyear TBA?

A. Well, when the management changed, I would say.

Q. Right. Where is Whelan Brothers located?

A. In Hackettstown.

Q. Is that your designated Goodyear supply point?

A. Yes.

Q. For Goodyear TBA?

A. Yes, they handle for that territory.

Q. Do you have a window valance on your station, Mr. Wyckoff?

A. Yes.

Q. What type is that?

A. Goodyear.

Q. Is it Goodyear?

A. Yes.

2943 Q. Well, you say you handle Lee primarily?

A. That's true.

Q. But you have a Goodyear window valance, isn't that somewhat odd?

A. It may be.

Q. What is the reason for that? It just seems a little unusual.

A. Goodyear man comes along and puts them up, but other than that, I never questioned anything about it. I still handle what my trade desires.

Q. Of course, if you are selling Lee, it would be preferable if you could advertise Lee, wouldn't it? Is the answer yes to that?

A. I advertise them. I have them in Lee stands, that is the tire is in Lee stands. I advertise Lee tires as well as Goodyear as far as that goes.

Q. Do you have an outside sign on your station? Do you have a Goodyear sign pole?

A. Yes.

Q. You don't have a Lee sign out on your station, do you?

A. No.

Q. Did you at one time have a Lee sign outside the station?

A. At one time there was a metal sign on the fence.

Q. That was a Lee sign?

A. Lee sign, but then it got rusted out and I never—

Q. (Interposing.) Never put it back?

A. Never put it back up.

2944 Q. Now, how did the Goodyear sign get up there in your station? Will you tell us how you got the Goodyear sign?

A. They came there one day and put it up.

Q. Who is "they"?

A. The—

Q. (Interposing.) Was it Goodyear personnel or Atlantic personnel?

A. That, I don't know.

Q. But it was one or the other?

A. It was, outside contractor, or I don't know. I didn't pay any attention to it.

Q. Was this done about the time that Atlantic changed over to Goodyear TBA?

A. I believe so, yes.

Q. You believe so. Now, that big outdoor Goodyear sign is visible from the highway there; I would assume, is it not?

A. Yes.

Mr. Kelaher: Maybe that was an inadvertent use of the word "impression," but if you were driving along the highway the sign that would be seen would be 2945 the Goodyear sign, is that correct?

The Witness: That would be.

By Mr. Kelaher:

Q. And anyone driving along the highway would not know you carried Lee until they went into your station?

A. No.

Q. So that if they were looking for Lee tires, they would go right by your place?

A. Unless they pulled in.

Q. Unless they pulled in?

A. For gasoline and like that; I have them on display, that is all. There is no pronounced advertising as far as Lee is concerned.

Mr. Kelaher: Thank you. No further questions.

*Redirect Examination by Mr. Thompson.*

Q. You said in response to a very persuasive question by Mr. Kelaher that you had no Lee sign out of your station. Didn't I see one when I was there the other day, sir?

A. There isn't on the fence.

Q. There isn't any on the pole?

A. There isn't any on the pole, and I have these display racks, what the tire sets in, the Lee display racks.

Q. Is my recollection incorrect, sir, that you have a Lee sign on your fence?

2946 A. I did have at one time, but—

Q. (Interposing.) Isn't it still there, sir?

A. No, it isn't. It was rusted out and I never replaced it, or Lee never replaced it.

Q. If you wanted to put up a Lee sign, would you feel perfectly free to do it?

A. I would, yes.

Mr. Kelaher: Objection to that question and answer, because it is controlled by the lease, included in the lease, one of the provisions.

Mr. Thompson: Perfectly obvious question and perfectly obvious correct question.

Hearing Examiner Kób: Objection overruled. The answer may stand.

By Mr. Thompson:

Q. Have you at all times since 1951 felt free to buy any kind of TBA that you wanted to buy?

A. That is right.

Mr. Thompson: That is all. Thank you very much.

Mr. Kelaher: I would like to ask another question.

*Recross Examination by Mr. Kelaher.*

Q. Don't you think that Atlantic dealer should feel free to purchase any TBA he wants to rather than to handle the brand that the company wants him to handle?

2947 Mr. Thompson: Is the question asked on the assumption that the witness is a psychiatrist or what? I have no objection, go ahead and ask it.

The Witness: No, I tried to give my customers what is in my mind a good product for their money.

By Mr. Kelaher:

Q. And you feel you can do that better by buying whatever you want to buy?

A. Yes.

Q. Rather than following the sponsored program of the Atlantic? Is that correct?

A. That is correct.

Mr. Thompson: Thank you very much.

Hearing Examiner Kolb: That is all, Mr. Wyckoff. You are excused.

(Witness excused.)

Mr. Thompson: May we have a couple of minutes recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

JOSEPH J. WASH was called as a witness by Respondent the Atlantic Refining Company and, having been duly sworn, was examined and testified as follows:

2948 By Mr. Thompson:

Q. Would you give your name please to the reporter?

A. Joseph J. Wash.

Q. Where do you live, Mr. Wash?

A. 168 East Washington Avenue, Atlantic Highland, New Jersey.

Q. Is that close to Newark?

A. Oh, that is about 40 miles away from Newark.

Q. About 40 miles away from Newark. Do you operate an Atlantic Refining Company service station?

A. I beg your pardon!

Q. Do you operate an Atlantic Refining Company service station?

A. Yes, sir.

Q. Do you lease the station?

A. Yes, sir.

Q. Where is it located?

A. 1399 Chestnut Avenue, Hillside, New Jersey.

Q. How long have you leased that station, Mr. Wash?

A. Five years.

Q. Since about 1952?

A. That's right.

Q. That is really about 6 years then, isn't it?

A. Well, five and one-half, something like that, not close to six.

Q. Now before you got that station, did you have 2949 another Atlantic station?

A. Yes, sir.

Q. Did you lease that one?

A. Yes, sir.

Q. Where was it located?

A. 254 South Street.

Q. Where?

A. Newark, New Jersey.

Q. Newark, New Jersey?

A. Yes.

Q. How long did you have that prior station, during about what years?

A. I would say about three years.

Q. Do you know Bill Gaestel?

A. Yes, sir.

Q. Was he your Atlantic salesman when you had your station at 254 South Street in Newark?

A. Yes, sir.

Q. Did you ask Mr. Gaestel whether you could get a better station?

A. Yes, sir.

Q. Did he get you one?

A. Yes, sir.

Q. And that is the station you now have?

A. That's right.

2950 Q. Do you carry TBA at your present station?

A. Yes, sir.

Q. Did you carry TBA at your prior station in Newark?

A. Yes, sir.

Q. Do you remember that somewhere around 1950 Atlantic started to sponsor the Goodyear TBA line?

A. Yes, sir.

Q. Do you remember whether you went to any dealer meetings about that change by Atlantic from selling Lee and Exide to promoting Goodyear?

A. No, I don't.

Mr. Kelaher: You say no?

The Witness: No.

By Mr. Thompson:

Q. You do remember getting certain letters from Atlantic about the program?

A. Oh, yes.

Mr. Thompson: Shall we stipulate, Mr. Kelaher?

Mr. Kelaher: Yes.

Mr. Thompson: It is stipulated that this witness received the three no-forcing letters, CX 206, CX 207, and CX 150.

By Mr. Thompson:

Q. After Atlantic changed to the promotion of Goodyear tires, did you try Goodyear tires?

2951 A. Yes, sir.

Q. Have you been dealing in Goodyear tires since about 1951?

A. Yes, sir.

Q. First at one station and then the other?

A. Yes, sir.

Q. Who is your so-called authorized supply point at your present station for Goodyear tires?

A. Frabel Brothers.

Mr. Thompson: What was the last question, please?

(The reporter read the pending question as requested.)

By Mr. Thompson:

Q. Do you buy some Goodyear tires from Frabel?

A. Yes, sir.

Q. Do you buy Goodyear tires from other wholesalers?

A. Yes, sir.

Q. Would you tell us who?

A. Summitt Tire Company.

Q. Is that a so-called authorized supplier so far as you are concerned, of Goodyear tires?

A. Yes, sir.

Q. I mean, is that the supplier which has been designated by Atlantic as your supplier?

A. No, sir.

Q. Do you buy Goodyear tires from McDonough?

A. Yes.

2952 Q. Is McDonough an authorized Goodyear supplier?

A. No, sir.

Q. Do you buy Goodyear tires from Bell and Wells?

A. Yes, sir, when I find it convenient.

Q. When you need it?

A. Yes.

Q. Is that wholesaler an authorized supplier to you?

A. No, sir.

Q. Do you shop for your Goodyear tires and buy them on price?

A. Yes, sir.

Q. I mean, why do you buy Goodyear tires at all?

A. Well, I think it is a good tire, well advertised tire.

Mr. Kelaher: Beg pardon?

The Witness: Well advertised tire, it is a name tire.

By Mr. Thompson:

Q. You find it easy to sell to your trade?

A. Pardon?

Q. Do you find Goodyear is easy to sell in your trade?

A. Yes, sir.

Q. What kind of batteries do you carry, Mr. Wash?

A. National batteries.

Q. Do you carry National exclusively?

A. Yes, sir.

Q. Before 1950 were you carrying Exide batteries?

Yes, sir.

2953 Q. After 1950 did you continue to carry Exide batteries?

A. After 1950?

Q. Yes. Let's put it this way. I will withdraw the question because I think we can ask you about your new station which you took in what, about '52?

A. Yes.

Q. Since you have been in your new station, have you been handling Exide batteries?

A. No, sir.

Q. Have you handled some Goodyear batteries?

A. Yes, sir.

Q. Did the Atlantic salesman persuade you to try the Goodyear batteries?

A. No, sir.

Q. How did you happen to handle the Goodyear battery?

A. Well, used the Frabel distributors of the Goodyear battery.

Mr. Kelaher: I didn't catch that answer.

(The reporter read the answer.)

By Mr. Thompson:

Q. You used Frabel?

A. He handled Goodyear batteries.

Q. Did you buy Goodyear batteries from other sources too?

A. Not that I recall.

Q. Then why did you switch to the National battery line?

A. Well, Frabel was handling the dry charge battery and I preferred the wet charge battery, so I turned over to National.

Q. So you dropped Goodyear—

A. (Interposing.) That's right.

Q. I think you said you now handle National exclusively?

A. Yes, sir.

Q. And you also handled accessories?

A. Yes, sir.

Q. And of course, you handled accessories at the prior station in Newark which you had before 1952?

A. Yes.

Q. From whom have you been buying your accessories, Mr. Wash?

A. Well, from Frabel and from Vesney or Vesely, you can pronounce it either way.

Q. Is that V-e-s-n-e-y?

A. V-e-s-e-I-y.

Q. Is that William Vesely?

A. Yes.

Q. Headquarters in Garwood division?

A. Yes.

Q. From which of those two suppliers do you buy most of your accessories?

A. Vesely.

Q. And you buy from other jobbers?

A. Occasionally.

Q. Is that again a question of price with you on your accessories.

2955 A. Well, if you get a good buy, we buy it.

Q. Now these National batteries and accessories which are non-Goodyear products, are openly displayed at your station, are they not?

A. Yes, sir.

Q. And you have shelves in your station?

A. Yes, sir.

Q. Do you recall that I visited you for five or ten minutes a few weeks ago? Do you remember me coming in with Mr. Gaestel?

A. Yes.

Q. And at that time you had non-Goodyear accessories and National batteries?

A. That's right.

Q. Openly displayed at your station?

A. That's right.

Q. Now has that been your practice over the years?

A. Yes, sir.

Q. Now do you sell these non-Goodyear products on Atlantic credit cards to your trade?

A. Yes, sir.

Q. Anybody in Atlantic ever told you that you cannot or criticized you for doing it?

A. No, sir.

Q. So far as that goes, has Atlantic ever criticized you for handling these non-Goodyear TBA items?

2956 A. No, sir.

Q. Ever tell you to stop buying them?

A. No, sir.

Q. Or suggested that you hide them some place?

A. No, sir.

Q. Would you hide them if they told you to?

A. No, sir.

Q. Because you have them for sale?

A. Can't sell them if you hide them.

Q. Do you decide what kind of TBA you are going to buy?

A. Yes, sir.

Q. Or does Atlantic decide for you?

A. I decide.

Q. Has Atlantic ever tried to force you or pressure you into buying Goodyear?

A. No, sir.

Q. Do you feel free to buy anything you want in the way of TBA from anybody that you choose?

A. Yes, sir.

Q. Have you always done so?

A. Yes, sir.

Q. You were first promoted at your request to a better station by Atlantic, were you not?

A. Yes, sir.

Q. And since that time your lease has been renewed several times?

2957 A. Yes, sir.

Q. And you are now on a three-year lease?

A. Yes, sir.

Q. I think I perhaps asked you earlier whether this isn't your second three-year lease?

A. No, this is the first three year.

Q. First three year lease?

A. Yes, sir.

Q. On the occasion of lease renewals, has the question of the brand of TBA which you are carrying ever been discussed?

A. No, sir.

Q. Have you ever been criticized when your station has been inspected because you handle non-Goodyear TBA?

A. No, sir.

Q. Have you ever been told not to buy from Goodyear jobbers like McDonough and Summitt which are not authorized Goodyear supply points?

A. No, sir.

Q. Do you know a man named E. E. Stevenson, who is an Exide salesman?

A. No, sir.

Q. You don't remember him?

A. No, I don't.

Q. I am going to read you from the record in this case a memorandum from Mr. E. E. Stevenson of the 2958 Exide Company to his superior, Mr. DeMott, which is dated December 14, 1950, and has been identified in this record as CX 300-A.

The memorandum reads:

Mr. Kelaher: It is 300 A-B.

Mr. Thompson: All right. ~~He says~~, referring to you, Mr. Wash, "This account carried six Goodyear batteries purchased from R. A. McDonough."

As I said, it was dated December 14, 1950. Do you recall by any chance whether by the end of 1950 you were buying Goodyear batteries from McDonough?

The Witness: I don't remember.

By Mr. Thompson:

Q. You don't remember?

A. I don't, no.

Q. Then it goes on. "One Willard and two Scranton."

Do you know the Willard and Scranton battery brands?

A. Yes, I know the brands, but I don't—

Q. (Interposing.) Do you recall whether you did or didn't have them actually or not?

A. Yes.

Q. Then the memorandum goes on; this is Mr. Stevenson writing the memorandum: "When I called December 6 with Mr. Van Tuno, the proprietor advised us that he had to stock Goodyear since this is a leased station."

My first question is, do you know Mr. Van Tuno?

2959. A. No, sir.

Q. Do you recall whether you were or were not visited by Mr. Stevenson and Mr. Van Tuno?

A. I could have—I just don't remember.

Q. What?

A. I could have, but I don't recall.

Q. Do you recall any conversation with any Exide salesmen in which you advised them that you had to stock Goodyear since you have a leased station?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Read that question, please.

(The reporter read the pending question as requested.)

Mr. Thompson: Could I have the basis of the objection, Mr. Kelaher?

Mr. Kelaher: He has been questioning him about a Mr. Stevenson and a Mr. Van Tuno and the witness has testified that he doesn't remember either gentleman, and my objection goes to the fact that he hasn't laid a foundation for the question.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Thompson:

Q. Now may we have the question repeated, please?

(The reporter read the pending question as requested.)

The Witness: No, sir.

By Mr. Thompson:

Q. Do you get visited by salesmen all the time?

2960. A. All day long.

Q. Do you know what the brush-off treatment is?

A. Well, you try to get rid of them any way you can, so you can get about doing what you have to do. Some of them are pretty persistent.

Q. Have you ever felt that you have to stock Goodyear batteries since you have a leased station?

A. No, sir.

Q. Have you ever felt that you had to stock any part of the Goodyear TBA line because you have a leased station?

A. No, sir.

Q. To the best of your recollection, have you ever told anybody that you had to stock Goodyear TBA?

A. No, sir.

Mr. Thompson: Your witness, Mr. Kelaher: You may proceed or have a cigarette, whichever you choose.

Mr. Kelaher: I think we might just as well carry on.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Wash, just to get your facts straight, you began your operation of the Newark station about when? Was it in 1950 or 1949?

Mr. Thompson: If your Honor please, I don't like to interrupt my friend, but "to get the facts straight," I think all these facts were terribly clearly brought 2961 out, if I may say so, sir, by me and I don't see any point, as these witnesses come, of having perfectly indisputed facts rehearsed by Mr. Kelaher. It just seems to me to be a waste of time. I don't suppose I can object to the form of the question, but I do object to the delay caused by repetition of facts which Mr. Kelaher and I could readily stipulate.

Mr. Kelaher: We could have had the answer by the time he got finished with the observation.

Hearing Examiner Kolb: I don't suppose there is a

legal ground for objection that I can see; it may not be the best way to ask a question.

Mr. Kelaher: Well, here is a man who had two stations, I am simply asking him when he started operating the first one. It is as simple as that.

When did you start operating the first station?

Mr. Thompson: The course of procedure, I am objecting to more than the particular question, Mr. Kelaher; it happens repetitiously.

Mr. Kelaher: I am not going to argue about the matter.

By Mr. Kelaher:

Q. When?

A. '49 or '50.

Q. Right. Now, you were at that time—Atlantic was selling Lee tires, Exide batteries, and a line of accessories, was it not?

2962 A. Yes, sir.

Q. And at that time, did you begin to purchase Exide batteries? Did you stock Exide batteries in your station?

A. I don't remember. I don't recall.

Q. Well—

A: (Interposing.) If Atlantic was handling them, we probably had them.

Q. I am sorry I can't hear that.

A. If Atlantic was distributing them, then I probably handled them, but I don't recall off-hand.

Q. If Atlantic was distributing them you probably handled them?

A. Yes.

Q. If Atlantic was distributing Lee tires, you probably handled those too?

A. Yes.

Q. In other words, you generally go along with Atlantic, as I understand your testimony?

A. Well, not necessarily. I go according to the way I think is best.

Q. Sure. Now, do you recall that sometime in 1950 Atlantic began to sponsor Goodyear TBA, you recall that, I presume?

A. Yes.

Q. Now at that time, was there an Atlantic dealer meeting in the Newark area?

A. I don't remember.

2963 Q. You don't remember?

A. They probably did. If they did, I didn't go to it.

Q. Now, at that time was a call made on you by an Atlantic representative and Goodyear representatives?

A. Yes, sir.

Q. And what did they say to you at that time? Do you remember?

A. I don't remember.

Q. You don't remember that?

A. You know, just changing over.

Q. They said Atlantic was discontinuing Exide and so on and was changing over to Goodyear, correct?

A. That's right.

Q. And did they indicate that they would like to have you purchase Goodyear TBA?

A. Well, no, they just told me they were going to change over.

Q. And they told you they were changing over and what else did they tell you?

A. Well, they told me which dealer was going to handle their TBA, the distributor.

Q. Who was that at the time?

A. I think it was Frabel.

Q. Frabel Brothers?

A. Yes.

Q. And they told you that Goodyear TBA could be purchased from Frabel Brothers, is that correct?

2964 A. That's right.

Q. And at that time, did you begin to purchase any Goodyear TBA?

A. No, not then.

Q. Not then. Shortly thereafter did you begin to purchase Goodyear?

A. I don't remember, but it took quite some time before we got rid of the merchandise we had then at that time.

Q. Beg pardon?

A. Well, we were still stocked with other merchandise.

Q. You were still stocked with Lee?

A. Yes.

Q. But as that stock went out, you bought from Goodyear?

A. Yes.

Q. You went along with Atlantic, in other words, right?

A. Well, if I bought from Goodyear—I mean, if you want to put it that way.

Q. Right. You began to purchase Goodyear TBA because Atlantic began to sponsor Goodyear TBA, is that correct?

A. Yes.

Q. Now, wasn't that generally true of other Atlantic dealers in the Newark area?

Mr. Thompson: That is objected to. In the context in which the question is asked, it is objected to. That question must be considered in the light of the last prior question.

2965 Hearing Examiner Kolb: In the light of the last question before. Let's hear the last question.

(The reporter read the record as follows:

"Question: Right. You began to purchase Goodyear TBA because Atlantic began to sponsor Goodyear TBA, is that correct?

Answer: Yes.

Question: Now, wasn't that generally true of other Atlantic dealers in the Newark area?"

Hearing Examiner Kolb: I don't know how this witness can testify as to what other Atlantic dealers bought.

Mr. Kelaher: I think it is a perfectly proper question.

The Witness: I cannot tell you about any other dealers anyway.

By Mr. Kelaher:

Q. I will ask you this question. At this time, you were located in Newark, New Jersey, is that correct?

A. Yes, sir.

Q. And there are a number of Atlantic service stations in Newark, New Jersey, isn't that true? Quite a number in that area?

A. Yes, sir.

Q. And did you notice that after Atlantic began to sponsor Goodyear TBA, that all of the Atlantic service stations began to carry Goodyear identification, Good-2966 year window valances, and outdoor signs?

Mr. Thompson: I object to the form of that question because it assumes the conclusion; the question was "Did you notice," and then he stated what he thinks is a fact. The question is just clearly improper.

Mr. Kelaher: What is wrong with that?

Hearing Examiner Kolb: It is proper cross-examination.

Mr. Thompson: May I repeat his question and make my point because this happens a number of times. He said to this witness, did you notice that all of the other

stations in Newark began to put Goodyear signs on their stations, or something to that effect.

Mr. Kelaher: I didn't ask him that.

Mr. Thompson: May we have the question repeated? I would like to get procedural points straightened out. I am getting to know it by the way you ask questions.

Mr. Kelaher: I would imagine so.

(The reporter read the record as requested as follows:

"Question: And did you notice that after Atlantic began to sponsor Goodyear TBA, that all of the Atlantic service stations began to carry Goodyear identification, Goodyear window valances, and outdoor signs?"

Mr. Thompson: That assumes in the question a fact which has not been testified to by this or any other witness.

It is simply the form of the question I am objecting to.

2967. Hearing Examiner Kolb: The witness can answer whether or not he knows. I think it is proper. The objection will be overruled.

The Witness: I didn't notice.

By Mr. Kelaher:

Q. You didn't notice after Atlantic began to sponsor Goodyear TBA there were other Atlantic stations with Goodyear signs on them in the area?

A. No, sir, I never paid any particular attention.

Q. Now, as I understand your testimony, you stock Goodyear tires exclusively, is that correct?

A. Yes, sir.

Q. And one of your suppliers is your authorized supply point, which I take it, was Frabel—has it always been Frabel Brothers?

A. Yes, sir.

Q. Even at your prior station?

A. Yes, sir.

Q. And do you purchase most of your Goodyear tires from Frabel Brothers?

A. I purchase some from Summitt tire and Frabel.

Q. Do you purchase from these other Goodyear distributors in equal quantities, or do you purchase most of your Goodyear tires from Frabel Brothers?

A. I would say from Frabel Brothers most of them.

Q. Most of them purchased from Frabel?

2968 A. Yes.

Q. Now with respect to your batteries, as I understand your testimony, you did carry Exide until Atlantic began to sponsor Goodyear. Sometime thereafter, you began to carry Goodyear batteries, is that correct?

A. That's right.

Q. Up until a certain period, which we have not yet established, when you switched to National batteries?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And when did this switch come over to National batteries?

A. About two years ago.

Q. About two years ago?

A. Yes, sir.

Q. Sometime in 1956?

A. That's about right.

Q. Now the accessories you handle, you purchased considerable amount of accessories from Frabel Brothers, is that correct?

A. I get more from Vesely than from Frabel.

Q. You get more from Vesely?

A. Yes, sir.

Q. But you stock some Goodyear accessories?

A. Yes, sir.

Q. Which items do you stock?

2969 A. That is hard to recall. Maybe polishes and—

Q. (Interposing.) Waxes and chemicals and things of that kind?

A. That's right.

Q. Now, does your service station have a window advertising valance, as they call it?

A. Yes, sir.

Q. And that is Goodyear, I presume?

A. Yes, sir.

Q. And you also have an outdoor pole sign on your premises?

A. Yes, sir.

Q. And I assume that is also Goodyear?

A. No, sir.

Q. Is there a sign out there?

A. Not at all.

Q. Beg pardon?

A. No sign at all.

Q. I am sorry, I thought you said you had a sign. Now let's get back to your first station before Atlantic began to sponsor Goodyear TBA, when you were buying Lee, Exide, and so on, did you have any signs in your station at that time?

A. I don't remember.

Q. Did you have a Lee sign up in the window?

A. I don't think so because the window wasn't big enough to stick a sign in it.

Q. How about an outdoor sign? Have a big outdoor sign?

2970 A. No sign, not that I remember.

Q. You didn't have any signs?

A. Not that I remember.

Q. After Atlantic began to sponsor Goodyear TBA, did they attempt to put signs in your station?

A. No, not that I remember.

Q. You didn't have room for the signs; is that your story?

A. That's right.

Q. But at your new station you do have a Goodyear sign?

A. Yes, sir.

Q. Now back in 1950, you did have Exide salesmen calling on you, did you not?

A. I don't recall.

Q. You were buying Exide batteries, weren't you?

A. I don't remember.

Q. Well, you have testified here today that you were buying Exide batteries, in that first station I am talking about, for a few months.

A. We were handling Exide batteries at the time I was buying Exide batteries.

Q. So you did have salesmen from Exide calling on you?

A. Well, they could have.

Q. They could have?

A. Yes.

Q. But you don't remember the names of the gentlemen?

2971 A. No, I don't.

Q. I take it that if you had any conversations with them you don't remember it?

A. No, you meet so many salesmen it is hard to remember all of them.

Q. Sure it is.

Mr. Kelaher: No further questions.

*Redirect Examination by Mr. Thompson.*

Q. Mr. Wash, when Atlantic started to promote Goodyear and the salesman came and talked to you, did he make it clear to you that you didn't have to take the Goodyear TBA line unless you wanted to?

A. Yes, sir.

Q. You switched from Goodyear, you testified, to National batteries?

A. Yes, sir.

Q. You testified, as I recall it, that your reason was that you preferred the wet charge to the dry charge battery?

A. That is right.

Q. You switched from the Goodyear to the National battery at whatever time Goodyear dropped the wet charge and came out with its dry charge battery? I mean, was that the time when you changed to National?

A. Well, we handle some Goodyear batteries, but 2972 we weren't satisfied with them.

Q. But we were trying to find out about when you made the change from Goodyear to—was that when Goodyear came out with dry charge?

A. About then, I would say.

Q. In the days before Atlantic began to sponsor Goodyear, did Atlantic salesmen sell Lee tires and Exide batteries to you, or did you deal with a Lee and Exide salesman?

A. I think Atlantic was handling them.

Mr. Thompson: Thank you, sir, that is all.

M. Kelaher: I just have another question I would like to ask.

*Recross Examination by Mr. Kelaher.*

Q. At the time the Atlantic and Goodyear people came out to see you in 1950, they explained the fact that Atlantic was going to sponsor Goodyear TBA, you remember that?

A. Yes.

Q. And did you feel that it would help your relations with Atlantic if you went along with the Goodyear TBA program?

A. No, I don't think it would.

Q. Did you feel that because Atlantic sponsored it it might be better for you to go along with Goodyear?

A. Well, I thought it would be.

Q. You thought it would be?

2973 A. Yes.

Mr. Kelaher: Sure. That is all.

Mr. Thompson: Thank you very much.

Hearing Examiner Kolb: That is all. You are excused.

(Witness excused.)

Mr. Thompson: May I have a short recess?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

SAM GROSSMAN was called as a witness by Respondent the Atlantic Refining Company and, having been duly sworn, was examined and testified as follows:

Mr. Thompson: If your Honor please, it is not 12:05 and I find this witness has a plane to catch at 1:00, so with your Honor's permission, Mr. Kelaher and I will try to complete this examination before the lunch recess.

*Direct Examination by Mr. Thompson.*

- Q. Will you give your full name to the court reporter?
- A. Sam Grossman.
- Q. Grossman. Where do you live?
- A. 786 Colonial Arms Road, Union, New Jersey.
- Q. Is that near Newark?
- 2974 A. Exactly ten miles outside of Newark.
- Q. You have an Atlantic service station in Newark?
- A. I have.
- Q. You are a lessee of that station?
- A. Yes.
- Q. It is located, I believe, at Raymond Boulevard and Foundry Street in Newark?
- A. Right.
- Q. You have had that station for about eight years?
- A. Approximately eight years.
- Q. Took it over in about 1950?
- A. Right.
- Q. Correct?
- A. Correct.
- Q. You have a three-year lease, I believe, sir?
- A. I have.
- Q. Do you recall from whom you—at your station, do you handle TBA?
- A. I do.
- Q. And you have handled it ever since you went into the station?
- A. Right.
- Q. Do you recall from whom you bought your first stocking order of TBA when you went to this station?
- A. Everything was bought from Frabel Brothers, Irvington.

Q. That was the Goodyear authorized supply point 2975 for your area at the time?

A. Right.

Q. And I think it still is—

A. Right.

Q. (Continuing.) —the authorized supply point for the area?

A. Right.

Q. Now at the time you opened your station, Atlantic was promoting the Goodyear TBA line?

A. They were.

Q. Did Atlantic salesmen assist you in the selection of your initial TBA stock? Do you recall?

A. Yes, he did in a way, because I was new in the business and didn't know too much what to buy.

Q. He advised you what items?

A. What I needed for the type of station I was contemplating running.

Q. How long did you continue to deal with Frabel?

A. Approximately a year.

Q. Did you drop Frabel as your source of supply in or around 1951?

A. Approximately, yes.

Q. From whom have you been buying tires since that time?

A. Anyone that I possibly can buy them from, the one that gives me the best deal and the cheapest price.

Q. Do you recall, sir, that I visited your station 2976 for a very few moments a few weeks ago, with Mr. Gaestel?

A. Right.

Q. Do you recall, sir, that you then had Hood and Silvertown tires on display? Am I correct?

A. Right.

Q. Is that something new or have you been carrying Hood and Silvertown for a number of years?

A. No, I have been handling them for a number of years, and I just had one left over that wasn't sold and I kept it outside.

Q. What other brands of tires have you been handling at the station since 1951?

A. I think every make.

Q. Have you bought anything from Frabel since 1951 that you recall?

A. No.

Q. What brand of batteries have you been carrying since 1951?

A. Exide and Delco.

Q. From whom have you been buying accessories since 1951?

A. Clinton Square, in Newark, Ring Brothers, and a few others where I can get the best and cheapest.

Q. Who handles your recapping business?

A. Alper Tire.

Q. Now all these tires and batteries and accessories are openly displayed since 1951?

A. Yes.

2977 Q. Did Atlantic ever criticize you for carrying these non-Goodyear brands?

A. No.

Q. Have they ever told you to stop buying them?

A. No.

Q. Ever tried to put pressure on you to switch back to the Goodyear line?

A. No.

Q. Have you at all times felt free to buy any TBA brand you wanted?

A. Anything I wanted.

Q. Have you, in fact, always bought any TBA brands that you wanted?

A. All the time except the initial order, which, I said, came from Frabel Brothers. That was Goodyear products.

Q. Did you at the time want to buy that stock or were you forced or compelled to buy?

A. No, bought it on my own free will at the time.

Q. Your lease has been renewed many times?

A. Every year up until last year when I was given a three-year lease.

Q. It has never been the subject matter of discussion at the time of lease renewal that you weren't handling Goodyear?

A. Oh, no. The lease was just brought down to me, signed and brought back, that was it.

2978 Q. Have you from time to time received offers to leave Atlantic and take leased stations of Atlantic's competitors?

A. I have.

Q. Isn't there an Esso station quite close to your station, sir?

A. An Esso station a block away which was offered to me only a short time ago, the dealer went out, they came down to me and wanted to know—same type of station, truck stop, wanted to know if I would take it over.

Q. Do you have a lot of trucker business which is personal to you?

A. Seventy-five percent of my business is truckers.

Q. Are they truckers who come back to you time and time again?

A. Yes, not transit, they are steady customers that are with me all the time.

Q. They are repeat customers; repeat business every day? Your own trade?

A. My own trade that I brought into the station, that I built up when I started the station.

Q. And you have known these people for a lot of years?

A. Since—I have some dealing with me since the day I went into business. Others have left, gone out of the territory, have gotten different work, still come back whenever they are in the territory to see me.

2979 Mr. Thompson: I don't see the basis for it, sir, but I, of course, defer.

Hearing Examiner Kolb: Whether he brought it to his station, I suppose you would end up with speculation of whether he could take it some place else.

Mr. Thompson: I simply offered to prove, sir, by this witness that his business is so personal to him he could take it with him if he moyed to a competing station.

Thank you very much, sir, I think Mr. Kelaher probably has a couple of questions. We will both keep an eye on the clock and try to help you catch that plane.

The Witness: Thank you.

#### *Cross-Examination by Mr. Kelaher.*

Q. Mr. Grossman, did you have a loan from Atlantic?

A. No, never had a loan.

Q. Never had a loan?

A. No.

Q. Now, would you tell us the circumstances leading up to your first stocking order when you became an Atlantic dealer. You stated your station was stocked completely with Goodyear TBA, is that correct?

A. No, not everything Goodyear. I had—

Q. (Interposing.) Your stocking order.

A. I had DuPont and so forth. DuPont products were in the station.

Q. Of course, that is in the Goodyear TBA line.

A. Then that was Goodyear then.

Q. Was that a sizeable order?

A. Yes.

Q. Approximately how much?

A. Off-hand, I really couldn't say.

Q. And was your station identified with the Goodyear window valances when you went into it?

A. Yes.

Q. Was this a new station or was this a station you took over from someone?

A. No, opened up brand new.

Q. Opened up brand new?

A. I was the first dealer in.

Q. First dealer and when you went in did it have Goodyear valances in it?

A. About a month, I would say, when they got around to it, a little after I was in it, by being a new station, they 2981 came down and put it in, put the Goodyear sign outside.

Q. Who came down and put it in? Was it Atlantic people or Goodyear people?

A. No, Goodyear representative.

Q. And did they put up the big outdoor pole sign for you?

A. They did.

Q. And who took that order for the first stocking order, was that taken by an Atlantic salesman?

A. An Atlantic salesman plus Mr. Frabel.

Q. Pius Mr. Frabel, who was the Goodyear distributor?

A. Goodyear distributor.

Q. And there were other Goodyear distributors in that area, were there not, distributors of Goodyear's tires, batteries, and accessories?

A. Tires and batteries and so forth, I don't know about accessories.

Q. Why was it that you placed your order with Frabel Brothers?

A. Well, I was new going into the business. That was my first venture. Of course I didn't know too much about it, what I would need and the salesman at the time, he gave me a hand, suggested this and that, and so forth.

Q. That was the Atlantic salesman that suggested this?

A. That is right.

Q. Did he tell you your authorized Goodyear supply point was Frabel Brothers?

2982 A. Yes, Frabel Brothers if I needed anything, get it from Frabel Brothers, he was able to supply me with everything I needed.

Q. Now, you continued to buy from Frabel Brothers for how long?

A. Approximately a year.

Q. Approximately a year?

A. Give or take a little; I couldn't say exactly to the day.

Q. Were you dissatisfied with Frabel Brothers' service, quality, or prices?

A. No, the service was all right. The service was, but after being in a business for a little, shopping around, I found out that I could save a little money for the same item by buying it elsewhere.

Q. For the same item, you mean like a Goodyear tire, you could buy elsewhere?

A. Yes, Goodyear tires included, I could have bought from McDonough, Goodyear dealer, maybe save a few cents on the tire.

Q. So you continued to purchase Goodyear tires after that, I take it?

A. Occasionally, if a customer insisted on Goodyear, I get them today for him to satisfy the customer, but I buy it from McDonough instead of Frabel.

Q. So your authorized supply point, you found, was charging higher prices than other Goodyear distributors?

2983 A. A little, yes. Where I could buy a half case or a quarter of a case for the same price, that I would have to buy a case, in case lots from Frabel Brothers.

Q. Did you find your service was as good or better from other jobbers as it was from Frabel?

A. I get good service from other jobbers. Being right in the city doesn't take too long to deliver and I get good service.

Q. Is your station on a busy thoroughfare location?

A. Main thoroughfare coming in from New York on Raymond Boulevard, coming off Pulaski Skyway ramp coming into Newark.

Q. Is that near Route 22?

A. It is, I would say, beginning of US 1, Route 1 coming from New York, coming off Pulaski Skyway. The Skyway ends and Route 1 begins.

Q. Now, what has been done about the Goodyear identification on your service station?

A. Not a thing; it is still there. They came down and put another one on once when the window broke.

Q. How recent was that?

A. I think about two or three years back.

Q. At that time, you were handling—

A. (Interposing.) Everything else but Goodyear.

Q. Everything else but Goodyear. Did you think it was unusual you should be advertising Goodyear when you were handling everything else but Goodyear?

2984 A. Well, no, I did handle Goodyear, as I said, if a customer insisted, to satisfy the customer. Few came in and wanted Goodyear, to satisfy them I would call up and have it down within a half-hour or 20 minutes.

Q. Wouldn't you have preferred to put up a Delco sign or Exide sign?

A. Personally, it didn't make any difference.

Q. Do you believe in advertising?

A. Advertising, yes, but people come in, they see the Goodyear sign, and if they want Goodyear, I get it for them. But if they came and just wanted a tire—

Q. (Interposing.) Isn't it true—

Mr. Thompson: (Interposing.) He hasn't finished his answer.

Mr. Kelaher: I think he finished his answer.

The Witness: If a customer come in and just wanted a tire, I would buy or make a call. If you wanted a set of tires for your car, I would call Firestone or call U. S. Royal, whichever, the same tire, both major brands, whichever I can get the better deal on, I would buy.

By Mr. Kelaher:

Q. Now you know, I would imagine, from reading newspapers and national magazines, that Delco and Exide and all the tire companies, spend a tremendous amount for advertising, isn't that true?

A. That is true.

2985 Q. And advertising, brand names, are quite important in the TBA business, are they not?

A. They are.

Q. Now if you are handling Delco batteries, for example, or if you are handling Goodyear tires or if you handle some other brand of tires, wouldn't it be to your advantage to make that known to the trade, transit trade going by so that if they wanted a Deleo battery they could come in and buy it from you?

A. If I did that, I would have my window pasted up with all the different—I wouldn't see anything out of the window because I handle every kind.

Q. That is right, but when people go by your station, they don't know that you handle Deleo batteries, for example.

A. No, not unless they stop in. They don't know what I handle unless they stop in; just saw Goodyear sign on the window.

Q. So if potential Deleo battery customer came by, you would undoubtedly lose him unless he stopped in your station?

A. That's right.

Q. The same is true of potential Goodrich tire customers or any of the other brands you have mentioned, which are not Goodyear, isn't that true?

A. That is true.

Mr. Kelaher: No further questions.

Hearing Examiner Kölб: Do you have any other questions?

Mr. Thompson: No, sir. Mr. Kelaher, may we  
2986 make the stipulation we have been making recently about receipt of the three no-forcing letters?

Mr. Kelaher: Yes.

Mr. Thompson: It is stipulated that the witness received CX-206, CX-207, and CX-150.

Hearing Examiner Kolb: That is all, Mr. Grossman, you are excused. Thank you very much.

The Witness: Thank you, sir.

(Witness excused.)

Hearing Examiner Kolb: The hearing will adjourn now until 2:00 o'clock this afternoon.

(Whereupon, at 12:00 o'clock p.m., the hearing was adjourned until 2:00 o'clock p.m. of the same day.)

2987

Afternoon Session.

Hearing Examiner Kolb: The hearing will come to order.

JOSEPH A. MARINO was called as a witness by the Respondent the Atlantic Refining Company and, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Francis Ballard.*

Q. Give your name to the reporter.

A. Joseph A. Marino.

Q. Mr. Marino, where do you live?

A. Petty Avenue, North Haledon.

Q. What town is that in or city?

A. That is the town of North Haledon itself.

Q. In New Jersey?

A. In New Jersey.

Q. Mr. Marino, this is the first time you have had an opportunity to be here while any testimony is being taken. My name of course, is Ballard. That is the trial examiner on your right there, Judge Kolb, and Mr. Kelaher is the gentleman sitting at this table. He is the attorney for the Federal Trade Commission.

Now, sir, you are the operator of an Atlantic Refining service station?

2988 Q. A. That's right.

Q. You are a lessee of that station?

A. That's correct.

Q. Could you tell us where that station is located?

A. The station is located on the corner of Hamburg Turnpike and Terhune Drive in Wayne Township.

Q. Terhune; could you spell that?

A. T-e-r-h-u-n-e.

Q. Now how long have you had that station?

A. It is going on three years. It will be three years in November or December.

Q. As I understand it, you had another Atlantic station before you took this station at Hamburg Turnpike?

A. Correct, at 35 and Market in Paterson, New Jersey.

Q. How long, sir, did you have the station at 35th and Market Streets at Paterson?

A. Approximately three years, I would say. Possibly even longer than that.

Q. Would it be fair to say that you were at the Paterson station from about 1949 or '50 to 1955?

A. Yes, that would be more correct.

Q. And then you moved over to your present station in 1955?

A. That's right.

Q. Why did you move from one station to another?

A. Well, I was looking for a nicer neighborhood 2989 than where I was actually located because of the neighborhood around me at 35th and Market in Paterson. I was kind of tired with that.

Q. Did you ask the Atlantic people to get you a new station?

A. I did.

Q. Or a different station?

A. I did.

Q. And they got it for you?

A. They certainly did.

Q. At that time, had your lease expired at Paterson in New Jersey? Or was it in the middle of the lease?

A. No, it was still in effect, as I recall.

Q. Now, going back a little bit further, I also understand at one time you were employed by the Atlantic Refining Company in another station?

A. That's right.

Q. But you were not the operator or the lessee of that station?

A. No, I was working directly for them.

Q. Prior to 1950 or 1951, is it your recollection that Atlantic was selling Lee tires and Exide batteries?

A. Yes, we were handling Lee and Exide.

Q. And what type of accessories were you handling then, sir?

A. Well, I personally handled all kind.

Q. Prior to 1951 did you handle other tires than Lee tires?

A. Occasionally when the occasion arrived. If a customer wanted a different brand, I would get it for him.

2990 Q. Now, do you recall the time when Atlantic changed from selling Lee and Exide tires and batteries to promoting Goodyear tires and batteries?

A. I would say that would be in the—oh, I would say in about the middle of '50 or early part of '50, I think is when they changed over.

Q. Did you attend any meetings where the change over was explained to Atlantic dealers?

A. Yes, and I think that was held either in Orange or Newark, I don't remember the town, but it was in a hotel. I believe it was Orange, New Jersey.

Q. And it was what, an evening meeting or day time meeting?

A. No, evening, if I recall, evening.

Q. Can you tell us, sir, generally what was the subject matter of that meeting?

A. Well, at that meeting Atlantic told all dealers that they were going to change over from Exide and so on, whatever we had, to Goodyear, and they wanted the opinions of the dealers to find out what they thought of it. We thought whether it would be a good idea or a bad one.

Q. Do you have any recollection of what the response was of the dealers who were at that meeting?

A. I would say the majority of them were very much in favor of it.

Q. Were you in favor of it?

2991 A. I was at the time, yes, sir.

Q. Did Atlantic—did you say you were? What was your answer?

A. I said I was.

Q. Did anybody at that meeting tell you or any other dealer that you heard that you had to buy the Goodyear TBA line?

A. No, no, definitely not.

Q. Now you have just stated in answer to my prior question that you were in favor of the Goodyear line. Can you tell me why?

A. Well, primarily in our area, the Goodyear line was much more known, more popular, and it would be a lot easier to handle Goodyear products and sell them than it would have been to handle a lesser known brand.

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By Mr. Ballard:

Q. Since 1955, in your present station, what tires have you been handling generally?

A. Well, the majority of the tires that I have been handling have been Goodyear, but I have handled others, such as Lee and Cooper, or any other brand. Lees, I bought a few times, Coopers upon customer demand, who wanted something other than the Goodyear.

Q. In your tire buying business, is price an important consideration?

A. Yes, definitely.

2992 Q. What kind of batteries have you been handling,  
Mr. Marino?

A. I have been handling Goodyear.

Q. Have you handled any other types of batteries, particularly?

A. Oh, occasionally.

Q. Are the tires and batteries, now I am talking about both of them, do you buy the Goodyear tires and batteries from your authorized supply point or do you buy them from another Goodyear outlet?

A. I buy most of them from my authorized supply point.

Q. Do you buy any substantial quantity from another Goodyear outlet?

A. Not a substantial quantity, no.

Q. Now, sir, I am going to ask you about accessories, about the TBA. In these proceedings accessories do not include motor parts, hard parts, things of that sort, but it does include waxes, polishes, fan belts, radios, things of that sort. Where do you buy your accessories?

A. Mostly from my supplier.

Q. Do you buy outside of your supplier?

A. Once in a while.

Q. Mr. Marino, do you know a gentleman named E. E. Stevenson?

A. I recall the name, but I don't know the man personally.

Q. Mr. Stevenson, sir, appears in the record of this case, to have been a salesman for the Exide Company. In December of 1950 Mr. Stevenson wrote a letter to a man named DeMott. The letter has been identified as CX-300-A. In that letter there is a reference to you. I would like to read you the letter, as much of it as refers to you, and then ask you a few questions about it.

"I called on this account," meaning you, "December 13, and found that they had five Goodyear and one Exide battery which was purchased from Clement DePope. They

advised that the majority of the batteries they sell are, still Exide, but do not stock any number because of constant pressure being exerted by the salesman for the Atlantic Refining Company."

Q. Now, sir, did you or did you not at any time in your career purchase Exide batteries from Clement DePope?

A. It is pretty hard to recall. If Clement DePope had Exide batteries and I purchased any, I probably did, but it is hard to recall whether I actually did or not.

Q. Do you recall any conversation of this sort with Mr. Stevenson on December 13, 1950 or at any other time?

A. Those apparently are Mr. Stevenson's words, not mine.

Q. You do not recall making this statement to Mr. Stevenson?

A. Not to him, I don't, no, or to anyone else as far as I am concerned.

Q. Has any Atlantic salesman ever exerted constant pressure on you to buy Goodyear TBA?

A. Not to me.

Q. Now, sir, there was a period of time when you 2994 did carry Exide batteries?

A. Yes, and when Atlantic changed over to Goodyear, I possibly did have maybe one or two left in stock, when I started to purchase my Goodyear batteries in order to fill my shelves up with the proper coverage.

Q. Did you have any trouble with the Exide batteries that you kept on in your station?

A. Well, the reason I think I got rid of Exide was because I had trouble and they wouldn't stand behind it, and that was the one reason I just didn't bother handling them anymore.

Q. Had it not been for that trouble, would you be carrying Exide batteries today?

A. On and off.

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: You may answer.

Mr. Ballard: Did you get the answer?

Hearing Examiner Kolb: He did answer.

Mr. Kelaher: What was his answer?

Hearing Examiner Kolb: On and off.

Mr. Ballard: Would you read the question and the answer as you have it in your record, please?

(Whereupon, the reporter read the record as requested.)

Mr. Ballard: I am sorry we were going to fast, Mr. Kelaher. We should slow down; I apologize:

2995 By Mr. Ballard:

Q. Mr. Marino, do you do any portion of your business on Atlantic credit cards?

A. Greatest majority of it.

Q. More than 50 percent?

A. I would say yes.

Q. Your station is what, a neighborhood station or industrial or commercial?

A. I would say it is mostly neighborhood, partially highway.

Q. Have you ever charged non-Goodyear TBA on credit cards?

A. I always do.

Q. Have you ever been criticized by Atlantic for having done that?

A. Not to my knowledge, never.

Q. Have you ever been criticized by anyone from Atlantic for charging any non-Goodyear TBA?

A. Truthfully, no.

Q. Have you ever been told to stop buying on the outside?

A. No.

Q. Have you ever been told to remove any non-Good-year TBA from your station?

A. Never.

Q. Ever been told to hide it?

A. No.

Q. You are presently on a three-year lease, did 2996 you so testify? Is that your first or second three-year lease?

A. Oh, I have had three-year leases since Atlantic came out with them. I don't know whether it would be the second or third, I imagine about the second, I would say.

Q. By any chance, did you come to Atlantic and ask for a three-year lease after they were announced?

A. No.

Q. In the course of your lease renewals, has anybody from Atlantic ever mentioned the fact that you buy non-Goodyear TBA?

A. No.

Q. Now, sir, are there within your neighborhood, which is—

A. (Interposing.) Wayne Township.

Q. Wayne Township, are there other gasoline service stations there from other oil companies?

A. Yes.

Q. Have any of them ever approached you to take a station with them?

A. Yes, I have had Tidewater, Tydol, Texaco, Gulf people have asked me, and also City Service.

Mr. Ballard: No further questions.

*Cross-Examination by Mr. Kelaher.*

Q. In what general area is your present location in respect to one of the larger cities in New Jersey?

A. I don't quite understand.

2997 Q. Are you in the Newark area or Paterson area?

A. I would call it more in the Paterson area.

Q. Are you in a well populated area?

A. No, we are around on the outskirts.

Q. On the outskirts of Paterson. How far—

A. (Interposing.) From the town of Paterson.

Q. How far away are you from the town of Paterson?

A. Approximately nine miles.

Q. Now you have been in that station since November or December of 1955, is that correct?

A. That is about correct.

Q. Then prior to that time you were at 35th and Market Streets in Paterson, New Jersey?

A. That is correct.

Q. And that would be in the city itself, I would think, downtown area? Or is that on the outskirts?

A. Not in the downtown area.

Q. Not in the downtown area. Is that on the outskirts?

A. Just exactly what do you mean by "downtown"? Some people by saying "downtown" they mean in the heart of the town. No, that is not—we are on the outside of town.

Q. But in a heavy populated area?

A. Yes, industrial area.

Q. And before that time you were also an Atlantic employee, is that correct?

2998 A. Yes.

Q. How long were you an Atlantic employee?

A. From '45, well, to the end of '49.

Q. And at that time were you operating a service station for them, or were you in other capacities?

A. Well, prior to going to 35th and Market Street, I was at 211 Central Avenue in Orange for the Atlantic Refining Company.

Prior to that—

Q. (Interposing.) Were you operating a station for them at that time?

A. I was assistant manager.

Q. Assistant manager of a station?

A. Yes.

Q. Go ahead.

A. And prior to that, I was in Philadelphia with them.

Q. Now, before Atlantic sponsored Goodyear TBA, you stocked, is this true, you stocked Lee tires, is that correct?

A. I stocked them. What do you mean by "stocking"?

If you mean by stocking, carrying any great amount, no.

Q. In your direct testimony you stated you handled Lee tires.

A. We handled them.

Q. And occasionally you purchased other brands?

A. That is right.

Q. What do you mean by that?

A. What do you mean, what do I mean by that?

2999 Q. Does that indicate—that indicates to me that you were carrying Lee as your principal brand tire.

A. That was my principal leader, was the Lee, and upon customer request, I would get whatever they want, whether it be Firestone or U. S. Royal or Goodyear or Fisk or anything they wanted, I would get.

Q. At that time your principal battery that you sold was Exide, is that correct?

A. That is right.

Q. And did you carry a stock of Exide?

A. Well, the way you mean "stock" I guess you would say yes.

Q. You had them available for sale. You know what the word "stocking" means, I assume?

A. By "stocking" we mean a full amount of coverage for all cars. But at that time I didn't have a full amount of coverage for all cars.

Q. By stocking, I mean—

A. (Interposing.) Principally Exide, yes.

Q. A number of Exide, you carried a number of Exide batteries for sale.

And now I would like to ask you a few questions about this dealer meeting that took place about the middle of 1950. Did you say that was in Orange, New Jersey?

A. If I recall, I think it was in Orange, New Jersey.

Q. And who attended the meeting?

3000 A. Oh—

Q. (Interposing.) Were there Atlantic dealers from all over?

A. A lot of Atlantic dealers from area were there.

Q. Would that be from the Paterson-Newark area or just from the Paterson area?

A. I think it was from other areas beside Paterson. Of course, I didn't know some of them.

Q. Approximately how many Atlantic dealers were there, would you know?

A. About one-hundred, I would say, it looked like.

Q. Were there Atlantic representatives present?

A. Yes.

Q. Who were the Atlantic representatives?

Mr. Ballard: If the witness knows.

Mr. Kelaher: Any answer he gives will have to be based on his knowledge, of course.

By Mr. Kelaher:

Q. Let me ask you, was the District Manager or Sales Supervisor—

A. (Interposing.) I think he was, I think Mr. Sandborn was District Manager at the time.

Q. And he was present?

A. Yes.

Q. And were any other so-called Atlantic "brass" present?

A. I think Mr. Romer was there. And a few Atlantic salesmen.

3001 Q. Was your salesman there at that time, do you recall?

A. No, I can't recall. He apparently was, I guess.

Q. Now in addition to Atlantic personnel, were any people there from Goodyear?

A. Yes.

Q. And was the so-called Goodyear "brass" in that area there, unless you know their titles?

A. I don't know who they were from Goodyear.

Q. At that time, did Atlantic announce that it was going to begin to sponsor Goodyear TBA in the Newark district?

A. Yes, if I recall.

Q. And at that time, did Atlantic announce that it was going to discontinue the sale of Lee tires and Exide batteries?

A. No, never mentioned it.

Q. They never mentioned them. But Atlantic did discontinue the sale of Lee tires and Exide batteries at or about that time, do you know?

Mr. Ballard: I don't know if that is within the witness' knowledge. So long as the question is limited to his station—

Hearing Examiner Kolb: (Interposing.) He knows whether he is buying them or not.

Mr. Ballard: Whether he is buying them.

Hearing Examiner Kolb: Or selling them. Objection will be overruled.

3002 Mr. Kelaher: You may answer.

The Witness: Would you repeat it again?

Hearing Examiner Kolb: Read the question.

(Whereupon, the reporter read the pending question as follows: "Question: They never mentioned them. But

Atlantic did discontinue the sale of Lee tires and Exide batteries at or about that time, do you know?"")

The Witness: From our own personal salesman, our salesman, Atlantic salesman.

By Mr. Kelaher:

Q. I am not clear about your answer. Are you saying at that time Atlantic through the salesmen that called on you stopped—

A. (Interposing.) If I wanted to order tire and batteries from my own salesman, Atlantic salesman, we couldn't get Exide or Lee, because they discontinued them, naturally.

Q. That is the point I am making. Now, getting back to this big meeting, do you recall the events at the meeting? What happened first, for example? Did Atlantic make a presentation, or did Atlantic introduce Goodyear personnel?

A. You have me there, I don't remember that.

Q. And did you say that Atlantic asked the dealers if they wanted to change to Goodyear TBA, is that correct?

A. More or less asked if we were in favor of it.

Q. Well, what do you mean by "more or less asked if you were in favor"?

3003 A. Well, they wanted our opinion, more or less, as to whether we would object if they were to handle Goodyear products, and whether we liked the idea or not, and I would say the majority of the dealers liked it.

Q. And when they asked for your opinion, did they ask you by secret ballot or did they ask you to voice your opinion on the floor, or what?

A. Well, it was more or less an open voiced opinion.

Q. Open voiced opinion. And were there some dealers who stated that they did not want Goodyear TBA?

A. Not in my immediate table, no.

Q. You used the word "majority" were in favor of

Goodyear TBA, so I assumed there was a minority who were opposed to the idea, is that correct?

A. About one or two maybe.

Q. At your table or—

A. (Interposing.) No, not at my table, that was from talk later on.

Q. Later on, but at the meeting itself, was there any talk to that effect?

A. I didn't hear any open objections, no.

3004 By Mr. Kelaher:

Q. Now, thereafter, you began to carry Goodyear tires, is that correct? That is what I understand your direct testimony.

A. Principally, yes.

Q. You began to stock Goodyear tires instead of Lee tires, is that right?

A. That's right.

Q. And your reason, one of your reasons you gave for that change was the fact that price was in consideration and I believe you also stated that Goodyear had good consumer acceptance in your area?

A. That's right.

Q. And did it have better consumer acceptance than Lee?

A. Yes.

Q. Now, if you were so sold on Goodyear tires, why didn't you carry them as your principal stock from the time you opened your station until Atlantic began to sponsor them?

A. Well, when I first opened the station there were

3005 Lee tires in there, and I purchased what was in there.

Q. And you never made any purchases of tires after that from any source?

A. Of Lees?

Q. Of anything.

A. Oh, yes, I bought what I wanted where I wanted to.

Q. Well, if you preferred Goodyear to Lee, why did you purchase the Lee tires in the station? If you wanted to handle Goodyear, why did you handle Lee, in other words?

A. It wasn't that I wanted to handle Goodyear. When I went into the service station and Lee tires were in there, I purchased them from the man going out.

Q. Was that considered as part of the deal when you went into the station that you would buy out the inventory of the dealer?

A. I could buy whatever I wanted to in the station, but for business purposes, or etiquette, or whatever you may want to call it, I just didn't feel it right to leave the tires there and say I didn't want them and have the man take them out. After all, he couldn't do anything with them. I had more of a chance of selling them than he did.

Q. Wasn't the fact that Atlantic was sponsoring Lee at that time—

A. (Interposing.) That had nothing to do with it.

Q. And the fact that you changed over to Goodyear had nothing at all to do with the fact that you began 3006 to handle Goodyear tires, is that what you are telling us today?

A. I don't quite get what you mean. I more or less buy what I want to when I want to, and from whom I want to. And I have never been told to do otherwise, and no one has ever told me and I don't ever intend to have them tell me.

Q. You still haven't answered the question.

A. Because I don't quite understand what you mean.

Q. I will make it very clear for you. Isn't it a fact that Atlantic sponsorship of Goodyear TBA influenced your decision to begin to purchase and sell Goodyear TBA?

A. No, not their sponsorship didn't influence me. I think the name Goodyear and their acceptance in our neighborhood more or less influenced me to try them out and see what could be done with them.

Q. If Atlantic had sponsored Firestone in your area, would you have still preferred Goodyear TBA?

Mr. Ballard: Objection. Don't answer the question. I object to it as being speculative or hypothetical, whichever phrase you prefer.

Hearing Examiner Kolb: Objection will be overruled.

The Witness: I forgot the question.

Mr. Kelaher: Read the question.

(Whereupon, the reporter read the record as requested.)

The Witness: I don't think so. Firestone is just as good a seller.

3007 By Mr. Kelaher:

Q. You would have begun to handle Firestone TBA?

A. Any big brand name that would sell would be all right with me.

Q. Now, with respect to your stock of batteries, you stock Goodyear batteries principally?

A. That's right.

Q. Incidentally, who is your authorized supply point? Would you give us the name of the authorized Goodyear supply point?

A. Our supply point is Klepper Auto Service in Hawthorne.

Q. How do you spell that?

A. In Glenrock—I am sorry.

Q. How do you spell that?

A. Klepper?

Q. Yes.

A. K-l-e-p-p-e-r.

Q. And that is in Glenrock?

A. Glenrock, New Jersey.

Q. And are there other suppliers of Goodyear TBA in your marketing area?

A. Yes.

Q. Do you purchase all of your Goodyear TBA from Klepper?

A. No.

Q. Do you purchase principally from Klepper?

A. Principally, yes.

3008 Q. Now on your accessories, I believe you stated that most of your accessories are purchased from your Goodyear supply point and once in a while you purchase from another jobber, is that correct?

A. That's right.

Q. Now, with respect to the questions concerning a document identified as CX-300-A and 300-B, you did state that you recalled a Mr. Stevenson by name, is that correct? You recall the name?

A. I recall the name because it has been mentioned a few times:

Q. When your Atlantic salesman was selling Exide batteries you placed your orders with the Atlantic salesman, is that correct, for Exide batteries?

A. Yes, but not always.

Q. Would you also purchase Exide batteries from another source?

A. Yes, I did.

Q. What was the other source?

A. Reliable Magneto, I think was the name of the source.

Q. And does the name Mr. VanTuno mean anything to you?

A. No.

Q. After Atlantic stopped selling Exide batteries then you began to get calls from Exide salesmen, isn't that correct?

A. I still purchased Exide after Atlantic went 3009 over to Goodyear, yes, I purchased them from Reliable Magneto.

Q. Right. So you did have some men from Exide calling on you, someone selling Exide batteries?

A. Not steadily.

Q. And Mr. Stevenson may have been one of those gentlemen, but you don't recall whether he was or not?

A. No.

Q. And when you were asked if you made the statement that you do not stock any number of Exides because of constant pressure being exerted by the salesman from United Refining Company, you answered to the effect that they were not your words, they were Mr. Stevenson's words.

Do you recall any conversation with any Exide salesman concerning that pressure?

A. No, it is too far back to recall accurately. In fact, I can't remember anything to that effect, but if there were an Exide salesman into my place at that time, if I did purchase Exide batteries, which I did once in a while, according to customer requests, I would purchase them from Reliable Magneto, and I don't more or less want to be bothered with other outside men.

Q. Isn't it true that when Atlantic swung over to Good-year TBA that Atlantic salesmen were interested in having you purchase Goodyear batteries in preference to Exide or other brands?

A. Well, all salesmen are interested in selling their product.

3010 Q. Didn't they indicate that they expected you to carry Goodyear batteries?

A. I don't quite get what you mean "indicated."

Q. Well, did they state or imply or did they have any talks with you concerning the matter?

A. No.

Q. Did Atlantic salesmen have any talks with you concerning the matter?

A. No, they just stated that Atlantic was turning over to Goodyear, and if we would cooperate in any way, in order for that, naturally, for him to sell his products, but not necessarily that I had to carry them if I didn't want to.

Q. But they asked for your cooperation, and did they explain to all of the Atlantic service stations in the area who were going under Goodyear TBA plan at the time?

A. No, not that I recall.

• • • •  
3011 By Mr. Kelaher:

Q. At the time you were handling Lee tires and Exide batteries; did you in your service station at that time, have any window decals up on the station when you were handling Lee?

A. I don't remember.

Q. Did you have any Exide signs in your station?

A. I am trying to think now—I think I had an Exide charger, if that is what you mean, Exide display shelf.

Q. I am talking about signs, you know, the window valances, the window signs. Isn't it entirely possible that you had a Lee sign, Lee-Exide sign up there in your station window when you were selling Lee-Exide products?

A. Possibly a sign of Lee when Atlantic was sponsoring Lee.

Q. That is what I am talking about, when Atlantic was sponsoring Lee.

A. More or less one of those.

Q. Did you have one of those big Lee outdoor signs on your premises when Atlantic was sponsoring Lee tires?

A. What do you mean? Hanging signs?

Q. Hanging signs.

A. Not that I ever recall.

Q. You never had one of those?

3012 A. No.

Q. Now when Atlantic began to sponsor Goodyear TBA, was Goodyear identification put on your station, Goodyear window sign and a Goodyear outdoor sign placed on the premises?

A. Goodyear signs were put up in the window, but I never had an outside sign.

Q. You never had the outside sign?

A. No.

Q. But you did have Goodyear sign put in the window?

A. Yes.

Q. And if there had been a Lee sign there, that would have been removed?

Mr. Ballard: I object to the question, your Honqr.

Hearing Examiner Kolb: The objection will be overruled.

Mr. Ballard: He hasn't proved, sir, not definite, it is entirely speculatively; if the witness stated there were a Lee sign first, then he could ask him whether it was removed.

Mr. Kelaher: He stated there possibly was one, as I remember his testimony.

Hearing Examiner Kolb: Overruled. Proceed.

By Mr. Kelaher:

Q. Whatever sign was there was replaced by the Goodyear sign in your window?

A. I would say yes.

3013 Q. Now at your current station, do you also have a Goodyear window valance for the station?

A. Yes.

Q. At this station, do you have the outdoor sign too, Goodyear outdoor sign too?

A. No.

Q. Just the window signs?

A. Just the window signs.

Mr. Kelaher: No further questions.

*Redirect Examination by Mr. Francis Ballard.*

Q. Mr. Marino, I have just one further question. In your opinion, do you think you would lose your Atlantic lease if you stopped buying Goodyear TBA?

A. No.

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled. The answer may stand.

*Recross Examination by Mr. Kelaher.*

Q. Let me ask you one question. In your opinion, does it lessen your chance of having your lease if you handle Goodyear TBA?

A. I don't think handling Goodyear TBA, whether I do or not would affect my chances for a lease with Atlantic one way or another.

Q. Isn't it a fact that by handling the sponsored brand, you eliminate any friction with the company with respect to TBA?

A. I have never had any occasion to have any friction with the company.

\* \* \* \* \*

Is that all for the witness?

Mr. Ballard: I have nothing further.

Hearing Examiner Kolb: You are excused.

(Witness excused.)

Mr. Ballard: May we have a moment's recess?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: Mr. Lott, will you take this seat, please?

CHARLES HENRY LOTT was called as a witness by Respondent the Atlantic Refining Company and, having been first duly sworn, was examined and testified as follows:

**3015 Direct Examination by Mr. Frederick Ballard.**

Q. Mr. Lott, will you give us your full name and residence address?

A. Charles Henry Lott, 300 Highland Avenue, Morristown, New Jersey.

Q. Mr. Lott, in case you haven't met all these gentlemen, to your right is Judge Kolb, he is the Hearing Examiner and presiding officer; and on your left is Mr. Kelaher, my opponent, he is the lawyer for the Federal Trade Commission.

If you will try to speak so I can hear you, then I am sure Judge Kolb can hear you and also the stenographer.

Mr. Kelaher: Let's include me too.

Mr. Ballard: I neglected to mention Mr. Kelaher, but that was not intentional, I assure you. I would like Mr. Kelaher to hear every word you say.

By Mr. Ballard:

Q. Now, sir, what is the address of your Atlantic station?

A. Route 38 on Church Street, Morristown, New Jersey.

Q. How long have you been the lessee of that station?

A. May 2, 1945.

Q. Now, when you moved into that station, where did

you buy your tires and batteries and accessories, when you first moved into that station?

A. Off of John Reader, Brooklawn, New Jersey.  
3016 Q. At that time, I believe tires, at least, were in pretty short supply, weren't they?

A. I had a certificate to buy 25 tires and I couldn't get one.

Q. What kind of tire did Mr. Reader carry?

A. He handled Lee tires and United.

Q. And what kind of batteries did he carry?

A. I didn't buy batteries from him, he didn't have any batteries.

Q. When the wartime shortage was over, did he take on some batteries?

A. Yes, he did.

Q. Did you buy them from him?

A. Yes, sir.

Q. Do you remember what brand he happened to carry then?

A. Exide.

Q. Mr. Reader was, in fact, an Atlantic supply dealer, wasn't he?

A. Yes, sir.

Q. Not for your area, I believe, though?

A. No, sir.

Q. Was Mr. Reader a personal friend of yours?

A. Yes, sir.

Q. Give you good service?

A. Yes, sir.

Q. Now, do you recall that in 1950 or there about's, Atlantic began to sponsor the Goodyear line of tires,  
3017 batteries and accessories?

Mr. Kelaher: Objection. I don't think the record establishes that was the date of this hearing. I am not certain but I don't think it was.

Mr. Ballard: I think you are correct. I am sorry, I have gone back and forth between areas. I will withdraw that question, or correct it to read this way: Do you recall that in about 1951; Atlantic began to sponsor the Goodyear line of tires, batteries and accessories?

The Witness: Yes, sir.

By Mr. Ballard:

Q. And did Mr. Reader take on the Goodyear line at that time?

A. Yes, sir.

Q. And did you continue to buy from Mr. Reader?

A. Yes, sir.

Q. Of course, after he took on Goodyear, you were buying Goodyear?

A. Yes, sir.

Q. Have you been pleased with the Goodyear line?

A. Yes, sir.

Q. Now, do you remember about the time that Atlantic took on Goodyear, receiving a letter from Atlantic Refining Company on the subject of TBA?

A. Yes, sir.

Q. Do you remember what the letter said?

3018 A. I would have to—I couldn't be precise and tell you exact words, but I can tell you almost what the meaning of the letter was.

Q. Would you do that for me?

A. I am quite sure it was from the Vice-President.

Mr. Kelaher: Your Honor, I think we have the letter in evidence. I think under these circumstances he should just refer to the letter, that is the best evidence and it speaks for itself.

Mr. Ballard: Your Honor, it seems to me while the letter may be the best evidence of what was said, what I am asking is this witness' understanding of Atlantic policy

as explained in the letter, and I think Mr. Kelaher would be anxious to know that.

Mr. Kelaher: I still think the letter speaks for itself and he doesn't even know, he may not know which letter he is referring to. I don't know—which one are you referring to?

Hearing Examiner Kolb: I think Mr. Kelaher's objection is correct. I will sustain it.

Mr. Ballard: Do you want to stipulate the witness received these letters?

Mr. Kelaher: Let's ask him.

By Mr. Ballard:

Q. Mr. Lott, I show you a document marked 3019 CX-150, it is a form of a letter. It isn't addressed to anyone, signed by Mr. Colley, Vice President of Atlantic, and I ask you to look that letter over and see if you recall getting a letter in that form, which of course, would have been addressed to you?

A. (After inspection.) I remember the letter.

Q. Now, I show you a second letter. This also is a form letter signed by Mr. Colley, it is marked CX-206 and is dated August 28, 1952 and is entitled "A Restatement of Atlantic TBA Policy."

Perhaps you will let me know whether you do or do not recall receiving that letter?

A. (After inspection.) Yes, sir.

Q. Finally, sir, I show you a letter which is marked CX-207, and this letter is from the office of, and it is signed by, Mr. J. O. Estlow, the manager of the Philadelphia-New Jersey marketing region. I believe that is your region, isn't it?

A. Yes, sir.

Q. And it is dated June 24, 1955, addressed to all Atlantic dealers. I wonder if you recall receiving such a letter as that?

A. (After inspection.) I remember this letter too, sir.

Q. Do you remember it?

A. Yes, sir.

Q. Mr. Lott, has anybody from the Atlantic Refining Company ever tried to force you to buy any TBA you didn't want to buy?

A. No, sir.

3020 Q. You have, of course, had your lease renewed many times?

A. Yes, sir.

Q. Do you think you would lose your lease if you stopped buying Goodyear TBA?

A. No, sir.

Q. Mr. Lott, do you remember a gentleman that used to be employed by the Atlantic Refining Company named Felix B. Heald?

A. Yes, sir.

Q. Do you remember that after he left Atlantic, Mr. Heald went in business under the name F & C Automotive Specialties, or some such name?

A. Yes, sir.

Mr. Ballard: Now, Mr. Heald appeared as a witness in this proceeding in June of 1957. Mr. Kelaher, the transcript page, I think, is 896, although I must say that doesn't look exactly right.

Mr. Kelaher: That's right.

By Mr. Ballard:

Q. Mr. Heald, as a witness, was examined by Mr. Kelaher here, and Mr. Heald mentioned your name, Charles Lott. So, Mr. Kelaher asked him this question: "What products did he", meaning you, Charles Lott, "purchase?" And Mr. Heald answered: "He purchased several different products, and he bought fan belts from me, and I had a man come down from Trenton to resleeve them."

Did you, in fact, buy products from Mr. Heald from 3021 time to time?

A. I couldn't really tell you what I bought from him. I did purchase from him, but I don't know what it was, it has been a long time ago, and I can't recollect just what it was.

Q. Well, the next question that was asked of Mr. Heald is: "What brand?" And Mr. Heald answered "Thermoid."

I take it you don't remember whether you bought Thermoid belts or not?

A. I really couldn't tell you unless I saw some evidence, sales slips or something of that nature.

Q. Then the next question is: "What happened after that?" And Mr. Heald said, "The next time I got there, they were all back to Goodyear again." And then Mr. Kelaher asked, "Did you have any conversation with Mr. Lott concerning Thermoid products?" And Mr. Heald said this: "He," meaning you, Mr. Lott,

Mr. Kelaher: (Interposing.) Your Honor, I am going to object. The proper way would be to ask him, instead of leading him, what the conversation was.

Mr. Ballard: On the contrary, this is procedure we followed from the beginning.

Mr. Kelaher: This isn't cross-examination.

Hearing Examiner Kolb: This is all testimony in evidence, is it not?

Mr. Ballard: I am quoting from the record and this is in evidence. I am about to ask the witness' recollection of this matter. If I go at it in any other way,

Mr. Kelaher is going to say I am not correctly quoting the record.

Hearing Examiner Kolb: Overruled.

By Mr. Ballard:

Q. The answer Mr. Heald gave is this: "He asked me as a personal favor, he said it embarrassed him for me to

come in there, and ask me as a personal favor, would I do this, and I said, 'Sure' ".

Now, sir, I ask you whether you recall any such conversation with Mr. Heald?

A. I recall no such conversation with Mr. Heald. The answer to that is no.

Q. Did you ever ask Mr. Heald, as a personal favor or otherwise, to stop calling on you?

A. No, sir.

Q. Now the final question that was asked of Mr. Heald was: "So, thereafter, he did not purchase any TBA from you?" And Mr. Heald said: "No."

Now, as a matter of fact, did you stop buying from Mr. Heald or did he stop selling to you?

A. Well, the way I recall it, Mr. Heald just stopped coming around. In fact, I considered him a friend; he used to work for Atlantic and I was always glad to see him, and he just stopped coming in. I don't remember ever doing anything to make it uncomfortable for him in any way, 3023 ever asking him to leave or not to come back.

Q. If he called around today, would you be glad to see him?

A. I would be very happy to see him.

Mr. Kelaher: That would be a little difficult because he is out of business.

Mr. Ballard: Do you want the remark to stand on the record?

Mr. Kelaher: I sure do.

Mr. Ballard: Mr. Lott, I don't have any further questions. I believe Mr. Kelaher does. He seems to have some on his pad.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Lott, what Atlantic district are you in? We have had a number of witnesses today and they are coming from various areas. Are you in the Southern jurisdiction of Atlantic?

A. I really couldn't tell you, sir, I am not sure.

Q. Who contacts you? Someone from the Philadelphia office?

A. We have a regular salesman who calls on me, yes, sir.

Q. And your contacts are with the Philadelphia office, not Newark, New Jersey, are they?

A. No, sir, my contacts are with an office in Belmar.

Q. In where?

A. Belmar.

Mr. Kelaher: Perhaps counsel can tell us. Is this 3024 dealer located in the South Jersey district?

Mr. Ballard: I believe he is, Jim. Incidentally, I would be more than glad to furnish you with a map of any Atlantic district or anything I can to prevent confusion.

Mr. Kelaher: I just wanted the record to be clear, Your Honor, at this point, I would like to make this observation. We had Mr. Wash, Mr. Marino, Mr. Wyckoff, and it is my understanding they are all from the North Jersey district.

Mr. Ballard: I believe that is correct.

Mr. Kelaher: And Morristown is south, it is near Camden and so the chances are he is in the South Jersey district.

Mr. Ballard: He is indeed in the South Jersey district.

Mr. Kelaher: Good. Fine.

By Mr. Kelaher:

Q. You became a lessee dealer on May 2, 1945?

A. That is correct.

Q. And at that time you began to carry the Atlantic sponsored line, Lee-Exide, and so on, is that correct?

A. Name some of the products and I will tell you.

Q. Well, just going over your direct testimony, you testified that you carried Lee tires, Exide batteries; and I am not clear on what your accessory purchases were, but did you also buy those from John Reader?

A. Yes, sir.

3025 Q. So, included in those accessory purchases, were Thermoid belts at the time, if you will recall.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. So, you purchased Thermoid fan belts from 1945 and you purchased all of the Atlantic sponsored products from 1945 until Atlantic changed over to Goodyear TBA, is that correct?

A. Yes, sir.

Q. And at that time you also swung over to Goodyear TBA?

A. Yes, sir.

Q. Now, I would like to ask you a little bit about this fellow John Reader. R-a-e-d-e-r?

A. R-e-a-d-e-r.

Q. He is located where?

A. Belmar, New Jersey. Excuse me, Brooklawn, it is Brooklawn.

Mr. Ballard: Perhaps you better spell it too. We don't all have New Jersey backgrounds.

The Witness: B-r-o-o-k-l-a-w-n.

By Mr. Kelaher:

Q. Now is Mr. Reader, did I understand you to say he ran an Atlantic service station?

A. Yes, sir.

Q. He operates an Atlantic service station?

A. Yes.

3026 Q. And he is an Atlantic supplying dealer for Goodyear TBA products at this time, is that correct?

Mr. Ballard: The witness hasn't answered the question. Did you understand the question? We can always have it read back.

By Mr. Kelaher:

Q. I will put it this way. On direct examination, you said Mr. Reader was Atlantic supplying dealer. I am just asking you if that is correct?

A. Yes, sir.

Q. And I take it that Mr. Reader discontinued handling Lee-Exide, Thurmoid, and so on, other products, when Atlantic swung over to Goodyear TBA, was that the setup? And then at that time commenced to handle Goodyear tires, batteries, and accessories?

A. Yes, sir.

Q. That is correct. Now, let me ask you a little bit about this change over in South Jersey. Was there a dealer meeting there at that time when Atlantic announced it was going to change to Goodyear TBA?

A. I think there was.

Q. And at that time, was Atlantic personnel present and Goodyear personnel present at the meeting?

Mr. Ballard: I object, your Honor, simply because the witness hasn't testified that he was present. I honestly don't know, but I think you are being a little unfair to ask him who was present.

3027 Mr. Kelaher: Maybe I misunderstood his answer. Maybe I didn't ask you if you attended the dealer meeting?

The Witness: I attended. I don't know what dealer meeting you are speaking of. I attended a lot of dealer meetings.

By Mr. Kelaher:

Q. I am talking about where Atlantic switched over to Goodyear TBA in 1951. Do you recall attending that meeting?

A. If you would give me a date, or let me know—

Q. (Interposing.) About March 1951.

A. Where was the meeting held?

Q. I am asking you; I don't know where it was held. I am asking you if a meeting was held at that time at which Atlantic announced it was going to sponsor Goodyear TBA?

A. I attended several meetings where they displayed Goodyear products and showed them to us.

Q. Were those meetings attended by a large number of Atlantic dealers?

A. Yes, sir.

Q. Now, after the meeting, was a call or visit paid to you by Mr. Sandborn or someone else in the Atlantic organization or—

A. (Interposing.) I don't know anybody by the name of Sandborn.

Q. Who was your district manager at that time, do you recall?

A. I couldn't recall.

3028 Q. Regardless of names, did anyone, did Atlantic personnel and Goodyear personnel visit you at the time of the change over to Goodyear TBA to talk to you about it?

A. Yes, sir.

Q. They did. And was that when you agreed to carry the Goodyear TBA line?

A. Yes, sir.

Q. And prior to that time, you carried Lee tires and Exide batteries—

A. (Interposing.) I think I stated I carried United and Lee tires, and Exide batteries.

Q. United and Lee tires, right, but you did carry Lee tires, Exide batteries and other products in the Atlantic line from 1945 until 1951, about six years, we will say?

A. Yes.

Q. And did Lee tires have good consumer acceptance in your area?

A. Well, I sold more United tires, I had better luck and better service out of United tires than I did from Lee. In fact, I was very happy when they dropped the Lee line.

Q. Was your reason for handling it the fact that Atlantic had it in its line?

A. No, sir, I had Lee and United tires.

Q. You just said that you were happy when they dropped the Lee line. I was just wondering what you mean by that.

3029. A. I meant that public acceptance is much better on Goodyear tires because of their advertising program, and I personally like them myself.

Q. Did you purchase the Lee tires because they were part of the Atlantic program?

A. Yes.

Q. And you were happy when they dropped Lee and began to sponsor some other brand and it turned out to be Goodyear, and you were happy when they began to sponsor Goodyear and you went right along with the program?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, Exide batteries, do they have a good consumer acceptance in your area?

A. I believe they do, sir.

Q. Exide batteries are made by a Philadelphia firm, as you know.

A. That's right, sir.

Q. And you are in the general Philadelphia metropolitan area?

A. Would you like my own personal feelings about Exide batteries?

Q. I am just going to ask you about consumer, whether you have demand for Exide batteries there in the Philadelphia area.

A. I never saw the Exide salesman; in fact, nobody ever called and tried to sell me an Exide battery. 3030 I think after Atlantic dropped the franchise or dropped the—

By Mr. Kelaher:

Q. Well, I did ask you this, whether or not Exide had consumer acceptance in your marketing area. What is your answer to that?

A. I don't really think I am an authority to answer about consumer acceptance.

Q. Did you sell them?

A. I could tell you personally what I thought of Exide batteries.

Q. You go ahead and tell us.

A. Personally, we had a lot of trouble with them and I don't care for the Exide battery.

3031 Mr. Kelaher: The witness and I aren't having a bit of trouble.

Mr. Ballard: You aren't having any trouble testifying, Mr. Kelaher. I don't know about the witness.

Mr. Kelaher: We understand each other completely. Now you are derailing me here.

By Mr. Kelaher:

Q. You stated that you personally didn't have any great preference for Exide batteries, is that correct?

A. That is purely personal.

Q. Purely personal, right. Now the record shows and you have testified, that for about six years you carried Exide batteries?

A. I didn't say that.

Mr. Ballard: I object to that characterization, sir. I think the witness was about to object as well. The witness did not say that.

Mr. Kelaher: Why don't you let the witness answer if you are sure?

3032 Mr. Ballard: Improper characterization you are throwing at him. If you ask him what he carried—

Mr. Kelaher: Talk about improper. He testified on direct he only handled Exide.

Mr. Ballard: He testified on direct examination, to the best of my recollection, he did not begin to handle Exide until sometime after he went into this station.

Mr. Kelaher: I am talking about prior to 1951. When did you begin to handle Exide batteries then, if that is the big stumbling block.

The Witness: I really didn't handle too many Exide batteries. I sold Weathervane batteries.

By Mr. Kelaher:

Q. Where is that made?

A. Philadelphia.

Q. Didn't you carry some Exide batteries because Mr. Reader began to be the supplier for Exide batteries?

A. Yes.

Q. And that was part of the Atlantic set-up, right?

A. Yes.

Q. And when Mr. Reader dropped Exide and began to carry Goodyear batteries, you began to carry Goodyear batteries, is that the status?

A. Yes.

Q. At the time you were carrying the Exide, did 3033 you have any signs, Lee signs or Exide signs in your station?

A. No, sir, I don't think I did. I can't recall whether I did or not.

Q. And after you began to handle Goodyear TBA, were Goodyear signs put in your station?

A. Goodyear people came there and put up signs, yes, tires and batteries, Goodyear tires.

Q. Put up a window valance?

A. Yes, sir.

Q. Did they give you one of the big outdoor signs too, pole with the Goodyear sign?

A. No, sir.

Q. Now, based on your own knowledge and your observation of the area, Atlantic dealers all had Goodyear TBA signs put in their stations after Atlantic began to sponsor Goodyear TBA, isn't that correct?

A. Well, I couldn't speak for them all. Do you mean 100 percent?

Q. Within your knowledge; I am sure you can't speak for them all. It was pretty general, wasn't it?

A. Yes, sir.

Q. Now, let's talk about Mr. Heald awhile. Mr. Heald, at the time he worked for Atlantic called on you in his official capacity as an Atlantic representative, isn't that true?

A. Yes.

Q. When Atlantic discontinued handling Lee tires, 3034 Exide batteries, Thermoid fan belts, and so on, Mr. Heald, about that time, left Atlantic, if you will recall. Do you remember?

Mr. Ballard: The witness hasn't answered the question.

The Witness: He asks the questions and answers them himself.

Mr. Kelaher: You answer them yourself. I am trying to speed it up.

Hearing Examiner Kolb: Let the witness testify, Mr. Kelaher.

By Mr. Kelaher:

Q. You knew Mr. Heald very well, didn't you?

A. I knew him personally very well.

Q. And he is a very fine gentleman?

A. Very fine gentleman.

Q. And when did he first start calling on you to sell products?

A. I really couldn't tell you the dates.

Q. Was it after Atlantic began to sponsor Goodyear  
TBA?

A. I wouldn't want to say, sir. I don't know.

Q. What product was Mr. Heald selling?

A. I couldn't even tell you that, it has been so long ago.

Q. Would it refresh your recollection if I told you he was selling Lee tires, Exide batteries and Thermoid fan belts among others?

A. Probably.

Q. Probably?

3035 A. Yes, sir.

Q. Would it refresh your recollection if I told you that after the Atlantic discontinued selling Lee tires, Exide batteries, and Thermoid fan belts, and other products, Mr. Heald went into business for himself, and started to sell those products to Atlantic dealers whom he knew in that area. Does that ring a bell with you?

Mr. Ballard: I was lost, could we have that one read over again?

Hearing Examiner Kolb: Read the question.

Mr. Kelaher: He understands.

Mr. Ballard: I am sure he understands, but I don't. I am entitled to too.

(Whereupon, the reporter read the record as requested.)

The Witness: He called on me to sell me products. I don't recollect whether it was Exide batteries he was push-

ing or Lee tires, but he didn't call on me—but he did call on me and I made purchases.

Mr. Kelaher: And you did make purchases?

The Witness: Yes.

By Mr. Kelaher:

Q. Is it entirely possible that you purchased Thermoid fan belts from him?

A. It is possible that I purchased Thermoid—I couldn't recall.

3036 Q. It is possible, is it not, that the Thermoid brand, the Thermoid fan belts were later resleeved as Goodyear, is that possible?

A. It is possible and it is a fact that Goodyear did resleeve the belts.

Q. Now we are getting somewhere.

A. And—

Q. (Interposing.) They did receive the belts and did they resleeve the Thermoid fan belts?

A. They resleeved the Thermoid fan belts, but I had a stock—I would like to clarify this and tell you.

Q. Go right ahead.

A. The Goodyear people came in and resleeved the belts, and put—but not the belts Felix Heald—I don't know whether I purchased from Felix Heald or John Reader, but the belts were resleeved when we took over Goodyear franchise. The Goodyear people come around every year and they will take my dead stock. I still have some belts that I purchased, I don't know whether they are Thermoid or just what belts they are, but Goodyear takes back the stock that isn't selling, that is why it is attractive.

Q. So that the fan belts were resleeved in any event. And it is also true, is it not, when Mr. Heald started to phone you to solicit your business that you had conversations with him of one type or another?

3037 A. About what?

Q. About TBA?

A. Certainly we talked about product, I don't know just what product it would be, but he came to me plenty of times as a customer, and other times as a gentleman selling something.

Q. I am talking about the occasions when he came to you when he had his own business. You certainly had conversations with him about TBA because he was trying to sell you TBA, isn't that true?

A. Well, if I knew what kind of TBA he was trying to sell me I could probably answer the question.

Q. I can tell you based on the testimony, he was trying to sell you Thermod fan belts, among other things.

A. In all probability, he did try to sell me Thermod fan belts, but—

Q. (Interposing.) In all probability you may have purchased some from him, isn't that true?

A. I couldn't tell you unless I saw the actual sales records and sales receipts. I wouldn't want to make a statement that I did or didn't.

Q. That is, you testified you did make some purchases from him of TBA?

A. I purchased from him but I don't know what it was. It has been so long ago I can't recall.

Q. It is also possible that a statement attributed 3038 to you by Mr. Heald may have been made by you and you may not recall?

A. It absolutely is not. I never made that statement to Mr. Heald because I considered him a friend, and I would never make a statement like that to him.

Mr. Kelaher: No further questions.

Mr. Ballard: May we have just a moment, your Honor?

Hearing Examiner Kolb: Yes.

(A short recess was taken.)

Hearing Examiner Kolb: On the record.

*Redirect Examination by Mr. Frederick Ballard.*

Q. Mr. Lott, during the time that you have been an Atlantic dealer, have you at all times felt free to buy whatever TBA you wanted?

Mr. Kelaher: Your Honor, I object.

Mr. Ballard: Your Honor, the man's state of mind is certainly in issue in this case.

Mr. Kelaher: I think he is picking up some questions he overlooked on his direct. He is going beyond the scope of the cross.

Hearing Examiner Kolb: I will overrule the objection.

Mr. Ballard: Would you read the question so the witness can answer?

(Whereupon, the reporter read the record as requested.)

The Witness: I think I answered that before and, 3039 in fact, I stated that I purchased from a lot of other people.

Mr. Ballard: I don't think I have any other questions.

Mr. Kelaher: I have nothing further.

Mr. Ballard: Thank you very much indeed, sir.

Hearing Examiner Kolb: You are excused, sir.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Ballard: Mr. Mapes.

AUGUST MAPES was called as a witness for respondent the Atlantic Refining Company and, having been first duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name.  
The Witness: August Mapes.

*Direct Examination by Mr. Francis Ballard.*

Q. Mr. Mapes, you have been sitting outside here; I don't think you have been in this room. Perhaps you have met some of these gentlemen. The gentleman on your right behind the bench, is Judge Kolb, who is the Federal Trade Commission Examiner here, and the gentleman here is Mr. Kelaher who is the attorney for the Government here.

My name is Mr. Ballard.

3040 Q. Mr. Mapes, where do you live?

A. I live in Somer's Point, New Jersey.

Q. And you operate an Atlantic service station at 9th and Bay Street in Ocean City?

A. Ninth and Bay Avenue, Ocean City.

Q. You have a lease on that station?

A. Yes.

Q. For how long have you been operating an Atlantic service station?

A. I have been in since 1929. I was about six years or more for the company and then I operated it all the rest as a dealer.

Q. Now I believe those dates are a little bit inaccurate. Would it refresh your recollection if I told you that you took the station in Ocean City, where you now are, in September of 1939? Does that seem about right?

A. Somewhere—I just can't recall just how many years.

Q. It is a long way back.

A. A long way back. I know I have been in since '29 altogether.

Q. Now, sir, what is the term of your present lease?

A. Three years.

Q. And before you got the lease that you are now working under, did you have a series of leases for that station?

A. I have had three-quarters and a year.

Q. And then, renewals?

A. Renewals.

3041 Q. Through the years?

A. Yes.

Mr. Ballard: Will your Honor grant me just a moment's recess while I assist here for a moment at the counsel table?

By Mr. Ballard:

Q. Mr. Mapes, am I right in saying that until about 1951 Atlantic was selling Lee tires and Exide batteries to its dealers?

A. That's right.

Q. Well, before 1951, what tires, batteries, and accessories were you carrying in Ocean City?

A. Well, it was the same, Lee tires and Exide batteries, that is, before 1951?

Q. Yes.

A. Yes.

Q. Did you carry any other types of tires back in those days?

A. No.

Q. How about your accessories before 1951?

A. Accessories—when I first started operating the station for myself, I just got the accessories off of J. C. Miller from Atlantic City.

Q. Now when you were buying accessories from J. C. Miller, was Atlantic selling accessories to you?

A. Just tires and batteries when they first started in.

Q. Now then, in 1951, Atlantic changed over from Lee and Exide to Goodyear tires, batteries, and accessories?

3042 A. Yes.

Q. Is that right?

A. Yes.

Mr. Ballard: Mr. Kelaher, I have just recently checked with this witness, and may I enter into the same stipulation with respect to the three letters?

Mr. Kelaher: No objection.

Mr. Ballard: It is stipulated that this witness has received and read Exhibits number CX 150, CX 206, and CX 207.

By Mr. Ballard:

Q. Now, sir, at the time of the change over from Lee and Exide over to Goodyear, did you attend any meetings with reference to the change over?

A. Well, I attended a couple of meetings, some of them I missed.

Q. Do you remember generally who was at the meetings that you attended?

A. Well, let's see—I don't know off-hand. I think the sales manager, Mr. Estlow, I think he was at them, and Al Debenedetto.

Q. Who was Al Debenedetto?

A. Al Debenedetto was a salesman at the time.

Q. Without going into too much, who was there, what was the purpose of the meeting, what was said at the meeting?

A. They were explaining the product that we  
3043 would have and telling us they were going to give us a good service on it with the accessories and stuff.

Q. Did anybody at that meeting say that the dealers had to buy Goodyear TBA?

A. No.

Q. Now since the change over in 1951, what has been your principal line of tires?

A. Since then?

Q. Yes.

A. Well, I have some Lee and the majority is Goodyear.

Q. Now as to the batteries, what has been your split-up in the batteries?

A. Exide and Goodyear.

Q. And your accessories, sir?

A. Accessories is from J. C. Miller and the Goodyear.

Q. About what portion of your accessories do you buy from J. C. Miller?

A. Well, at times it runs about 60 percent.

Q. What kind of hose do you carry?

A. Why, I have some Gates hose and some Goodyear.

Q. Do you have Fram and A C Filters?

A. Fram and A C Filters.

Q. You have Exide batteries?

A. Exide.

Q. And Lee tires?

3044 Q. Lee tires.

Q. What kind of washers and waxes do you carry?

A. I have DuPont and Speedy Wash.

Q. Mr. Mapes, do you recall my visit to your station down there oh, a while back, when I was down?

A. Yes, sir.

Q. Is there a contraption in your Bay area that is marked "Fram"?

A. There is a Fram air cleaner, is that what you mean? It looks like a cart.

Q. How big is that, approximately?

A. That runs, I would say, about four by five, stands about four feet high,

Q. And it is painted with the name "Fram" and in the Fram colors?

A. Fram colors and name on it.

Q. Are these accessories, the Exide batteries and the Lee tires openly displayed in your station?

A. Yes, sir, right on the rack, people can see them as they come in the station.

Q. Have you sold those items on Atlantic credit cards?

A. Yes, sir.

Q. Have you ever been criticized by anyone from Atlantic?

A. No, sir.

Q. You have not been criticized?

A. Nobody criticized.

3045 Q. Have you ever been criticized generally by Atlantic for carrying non-Goodyear TBA?

A. No, sir.

Q. Have you ever been told to stop buying it?

A. No, sir.

Q. Have you ever been told to get it out of the station?

A. No, sir.

Q. Or to hide it?

A. No, sir.

Q. Do you have free choice as to what TBA you buy?

A. I do.

Q. You touched a moment ago on the various lease renewals that you had in the course of your career. Has any Atlantic person ever mentioned the fact that you buy non-Goodyear TBA in the course of getting a lease renewal?

A. No.

Q. Have you got any other gas stations in Ocean City?

A. No.

Q. I mean, are there any other gas stations in Ocean City?

A. You mean that I can get?

Q. Yes.

Mr. Kelaher: He is ahead of the question, I think.

The Witness: Well, I could turn around at one time and get three-quarters of the stations along 9th Street, there about 15 stations, and all those companies asked 3046 me to take those stations over.

Mr. Kelaher: That isn't responsive to the question, but I won't object as that would have been the next question.

Mr. Ballard: And we all want to speed it up.

By Mr. Ballard:

Q. Mr. Mapes, do you recall a man named Felix Heald.

A. Felix Heald?

Q. Yes.

A. Yes.

Q. He testified in this proceeding at pages 897 and 898 of the record, and I am going to read you his testimony and ask you to comment on it as we go through it. It is fairly long so I will interrupt myself at occasions to ask you whether it is accurate.

He was being questioned by Mr. Kelaher, the gentleman at the other table. Mr. Kelaher asked Mr. Heald, "Did you at one time call on August Mapes?" To which the answer was, "Well, Gus Mapes, I used to go to Ocean City every Summer and I have known him for many, many years. And if he wanted to buy a few things, he would drop me a line and when I went to the Seashore I would take them to him."

Is that right?

A. That is right.

Q. Then the next question was, "Did he purchase Lee tires, Exide batteries—"

3047 Mr. Kelaher: That wasn't the next question. You are reading it from a different transcript.

Mr. Ballard: Off the record, please!

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. The next question, Mr. Mapes, was "Did he purchase Lee tires?" To which the answer was, "Yes."

Is that correct?

A. Yes, I purchased a few off of him.

Q. The next question was, "Exide batteries?" To which the answer was, "Yes."

A. Yes, a few.

Q. The next question was, "Car wash?" And the answer was, "I sold him Speedy car wash which can be used as a car wash."

A. That's right.

Q. The next question was, "Did he continue to purchase these products from you?" And the answer was, "No, he stopped."

A. That's right, I still have stuff on hand.

Q. That you bought from him?

A. Yes.

Q. The next question was, "Did he" that is you, "give you a reason why he stopped?" To which the answer was, "He said that the supervisor there had really given him a hard time."

3048 A. No, that is wrong.

Q. Did you ever tell that to Felix Heald?

A. No.

Q. Now the subsequent question, sir, identifies the supervisor as being Mr. Cramer. Did Mr. Cramer ever given you "quite a hard time"?

A. No, sir.

Q. Now, you have stated, of course, that you did buy some of these items which we have gone through?

A. Yes.

Mr. Kelaher: I would like the record to show that he testified that he bought all that were mentioned in the testimony.

The Witness: I bought Lee tires, Exide batteries, and Speedy Wash; I bought all three items off of him.

By Mr. Ballard:

Q. All right, sir. Why did you stop buying from Mr. Heald?

A. Well, for one reason, I still have some of the stuff on hand. Another reason was I sent him an order through the mail and he had moved and the order was held up. In the meantime, the customer that ordered the stuff got tired of waiting and I turned around and sold him Good-year tires in place of it, and when Mr. Heald come down with it, I took what I had ordered off of him, and still have them in stock, because the lady turned around afterwards, cancelled the order off altogether and got it off of 3049 some friend.

Mr. Ballard: I see. I have no further questions.

*Cross-Examination by Mr. Kelaher.*

Q. In answer to one question about your lease, I thought I heard you make reference to three-quarter-

A. (Interposing.) Nine month lease.

Q. Nine months?

A. Nine months lease.

Q. At one time was that?

A. At one time it was nine months.

Q. Nine months lease. Now, as I understand your testimony, when Atlantic first started to sell Lee tires and Exide batteries without the accessories, right?

A. Yes.

Q. And at that time you began to purchase Lee tires and Exide batteries from Atlantic?

A. Yes.

Q. Is that right?

A. Yes; when I first went in for myself?

Q. Yes.

A. You see, they didn't sell accessories right off the bat.

Q. When did they begin to sell accessories? Or, let me put it this way, when they did begin to sell accessories, did you start to purchase accessories from Atlantic?

3050 A. Well, it was several years later when they started to bring accessories down into Jersey, and I did buy them off of them. They used to have one of the men in Atlantic City operating a station, he was the dealer.

Q. Do you recall his name?

A. Why Jimmie Clark was the first man.

Q. Jimmie Clark?

A. Yes.

Q. And he was an Atlantic service station dealer?

A. He was an Atlantic service station dealer and he handled the accessories.

Q. And—

A: (Interposing.) Then after Jimmie Clark there was a fellow by the name of Earnie Miller.

Q. Earnie Miller?

A. Yes.

Q. Where was Mr. Miller?

A. Mr. Miller, he had another station in Atlantic City—I got it, I think, sir, Clark was the first and Earnie Miller was the second, or whether it was vice versa, or anyhow, either one of them were Atlantic dealers. One was at Missouri and Pacific and the other one was at Morris and Atlantic where Mr. Clark had his stations, and Earnie Miller had his station at Missouri and Pacific.

Q. Now, when you were purchasing Lee tires, who 3051 did you purchase those from?

A. I purchased those right from them, they were the distributors for accessories and tires and batteries.

Q. Everything came from these men?

A. Yes.

Q. From Mr. Clark and Mr. Miller? And they were Atlantic service station operators who were also wholesaling?

A. Authorized dealers for Atlantic down here.

Q. And was that, at that time, did Atlantic advise you that you could get your TBA from those points?

A. Well, I said they were the distributors, yes.

Q. Now, I would like to ask you a few questions about the time when Atlantic began to sponsor Goodyear TBA.

A. Yes, sir.

Q. You stated that you attended several meetings. Do you recall that testimony?

A. Yes.

Q. To begin with, your station is located in what would be the South Jersey district of Atlantic?

A. Yes, South Jersey.

Q. And did other Atlantic dealers from your area attend the meetings you referred to?

A. As far as I can recall, the boys came up from Wildwood, up to Atlantic City to the meeting, and the boys in Atlantic City, and from Egg Harbor.

3052 Q. So you covered quite a wide territory?

A. That was all on my salesman's territory, yes, right through in there.

Q. Who was your salesman at that time?

A. Let's see, I had several of them—George Mullen was one, and—

Q. (Interposing.) Was there a Mr. Cramer who was your salesman at one time.

A. Mr. Cramer was the district salesman.

Q. He was the district salesman?

A. Yes.

Q. Well, getting back to the meeting, approximately

how many Atlantic dealers were present at the meetings in Atlantic City at that time?

A. At the meeting?

Q. At the meeting when the Atlantic announced it was changing over to Goodyear TBA.

A. Well—I would say around 20 anyhow.

Q. Around 20?

A. Yes.

Q. And I believe you did state that Mr. Eastlow was present, who was Atlantic sales manager?

A. He was my first supervisor when I worked for the company, and then afterwards, after the company discontinued operating down there, then I think a George Mullen come in as salesman.

3053. Q. Just getting back to the meeting, I am trying to establish who the men were who were present at that meeting. Were there several men from Atlantic present and several from Goodyear?

A. Oh, yes.

Q. And then at that time, was a vote taken as to whether or not the Atlantic dealers wanted to change to Goodyear or not?

A. I was never at any meeting where we voted on anything.

Q. They just announced that Atlantic was going to change over to Goodyear TBA?

A. I got a letter on the fact that they after a certain time, that Goodyear would be our distributor for accessories.

Q. And also for tires and batteries?

A. And tires and batteries, yes.

Q. Just as simple as that. You say you were told who your Goodyear dealer would be?

Mr. Ballard: Excuse me, Mr. Mapes; I object to the form of the question, your Honor. It is about a three part question.

Mr. Kelaher: Three parts, tires, batteries, and accessories.

Mr. Ballard: No, three questions all in one. I think it ought to be rephrased.

Hearing Examiner Kolb: Read the question.

(The reporter read the record as requested.)

Hearing Examiner Kolb: Objection overruled.

3054 Mr. Kelaher: You may answer.

The Witness: I think that is the way it was. I myself, I don't think I had ever been where we voted on it. If it had been, I had missed that meeting altogether.

By Mr. Kelaher:

Q. Now, after that meeting, did an Atlantic representative and Goodyear representative call on you personally at your station and discuss the new program, the new Goodyear program?

A. I don't recall.

Q. When it was announced, was either Mr. Clark or Mr. Miller designated as your authorized supply point at that time or was there another Goodyear supply point?

A. Well, after the company done away with the accessories, the distributor down in Atlantic City was tires and appliances. Goodyear Tires and Appliances, it was called.

Q. Where were they located?

A. They were located on the—

Q. (Interposing.) In what city?

A. Atlantic City.

Q. That's good enough.

A. I just can't figure what street it was.

Q. That's all right. That's fine. And were you told you could purchase your Goodyear TBA at that specific point from Goodyear Tire and Appliance in Atlantic City?

A. What we wanted we could get over there.

3055 Q. That was what was known as your designated supply point?

A. Yes, supply point, yes. I was going to say it was a very bad place.

Q. You say it was a very bad place?

A. It wasn't such a good dealership.

Q. You didn't like the service?

A. No, sir, it was awful.

Q. Now, did you continue to purchase from Goodyear Tire and Appliance?

A. Yes. Now it is under a new name now. It is called G & H Tire and Retreading.

Q. G & H Tire and Retreading?

A. Yes.

Q. And why did you continue to purchase from Goodyear Tire and Appliance if the service was so poor?

A. Well, there was some material that my customers wanted and I got.

Q. Were they the only Goodyear distributors in the area?

A. Just around here, yes, otherwise I would have to go either to Wildwood or to Black Horse Pike.

Q. Now, since Atlantic changed over to Goodyear TBA, has the majority of your tire stock been Goodyear?

A. Most of my tire stock is, yes.

Q. And it has been that way since the changeover, is that correct, in March '51?

3056 A. Yes.

Q. Now, you stated that you also have carried Exide and Goodyear batteries since March '51, is that true?

A. Exide and Goodyear batteries.

Q. And which do you carry the most of? Which do you stock the most of?

A. Why, at the present time, I have about 50 percent of each.

Q. Fifty percent of each?

A. Yes.

Q. Prior to the time that Atlantic began to sponsor Goodyear TBA, did you just carry Exide batteries?

A. Yes.

Q. At that time, you did not carry Goodyear batteries, did you?

A. No.

Q. Did you take on the Goodyear batteries because Atlantic began to sponsor Goodyear batteries?

A. Well, I just brought in the articles, I mean, on account of the product; I figured, was a good brand, and had a good name reputation behind it.

Q. But up to that time you had never purchased or sold Goodyear batteries?

A. No.

Q. But the fact that Atlantic began sponsoring it influenced your decision to carry the Goodyear batteries, isn't that true?

A. Well, not altogether, no.

3057 Q. Not altogether, but it did to some extent?

A. To a little extent, yes.

Q. Now, in answer to a question on accessories, you stated that you carried accessories which are purchased from J. C. Miller and also accessories from your Goodyear supply point. Is that correct?

A. Yes, sir.

Q. And you said that sometimes, you used the word "sometimes", 60 percent of your accessories were purchased from Miller.

A. That's right.

Q. Now, at other times has 60 percent been purchased from Goodyear? Does it vary from time to time?

A. No, most of it I get from J. C. Miller.

Q. But you do stock some Goodyear items?

A. Oh, yes.

Q. What ones, for example?

A. Well, they have the DuPont products which I can get from either one I have off of them. I have DuPont, the Simonize and the Johnsons, A. C. plugs, A. C. filters.

Q. All from Goodyear?

A. They are from Goodyear.

Q. So, you carry quite a considerable stock of Good-year accessories?

A. Yes, and a considerable stock of Fram cartridges.

Q. They are purchased from Mr. Miller?

3058 A. And Champion spark plugs.

Q. Now Mr. Ballard said when he visited you he saw a Fram air cleaner. What is that used for?

A. Why, on these cars since 1957 they have what we call a dry air cleaner on them to filter air to the carburetor.

Q. Piece of equipment used for repairing automobiles?

A. Used for servicing the air cleaner.

Q. Has nothing to do with TBA?

A. Yes, because your air cleaner comes from the Fram people.

Q. Of course, the air cleaner does.

A. I mean the cartridges, the air cartridges.

Q. I should say the air cleaner has nothing to do with TBA.

A. The cartridge fits into the air cleaner, it is made by Fram.

Q. That is inserted in the air cleaner in servicing the car?

A. It purifies the air going into the carburetor, takes all the dirt and catches the dirt and stuff.

Q. Can you use any type of cartridge on that? Any brand?

A. Why the A. C. has finally come out with one too, now, but I have gotten my Frams first so I am using Frams.

Hearing Examiner Kolb: Is that cartridge used on the car or on the cleaner?

The Witness: The cartridge sits in the top of the air cleaner.

Hearing Examiner Kolb: Of the cleaner?

3059 The Witness: Yes.

By Mr. Kelaher:

Q. Now, Mr. Mapes, when you were carrying Lee tires and Exide batteries, and other products you purchased from Atlantic, did you have any signs in your service station advertising Lee tires and Exide batteries?

A. On the fence.

Q. On the fence?

A. Yes.

Q. And after you swung over to Goodyear TBA, were any signs, any Goodyear signs placed in your station?

A. Well, there were finally some put in, yes, on the windows.

Q. On the windows, put a window valance in?

A. Window valance in.

Q. When you say "finally," you mean they didn't get around to it?

A. At first I wasn't there when the man come around, you see, and then afterwards the man come around and asked me about it and I told him he could put it up there.

Q. Did they also put up an outdoor pole, a Goodyear pole?

A. Just put a sign on the little pole.

Q. On the little pole. Had there been a Lee sign up there?

A. Not on the little pole.

Q. Did they take the Lee sign down?

A. No, the signs were taken down by me because  
3060 we had too many signs. They were all old and stale  
and—

Q. (Interposing.) Did you take the Lee sign down  
about the time you put the Goodyear signs up?

A. No, the Lee signs were down before.

Q. They were down before?

A. Before.

Q. Before the Goodyear signs went up?

A. Oh, yes.

Q. After the Goodyear TBA plan went into operation, is that right?

A. Yes, it was about, right afterwards.

Q. In other words, when you heard Atlantic was going to sponsor Goodyear TBA, you took down the Lee signs, is that what you said?

A. I took all signs down.

Q. Took all signs down?

A. Yes.

Q. What other signs?

A. Cigarette signs, soft drink.

Q. Did you have any Exide battery signs?

A. No, I didn't have no Exide signs. I never had an Exide battery sign.

Q. Now, did you observe in your marketing area, after Atlantic changed over to Goodyear TBA, other Atlantic dealers also had Goodyear identification placed in 3061 their stations, such as Goodyear window valances or Goodyear outdoor signs?

A. Well, to tell the truth, I didn't pay much attention to it because I didn't get around too much to the other Atlantic stations. I generally always come to my own and go right back home.

Q. Hasn't it been your observation, even today in your area, that you see Goodyear identification?

Mr. Ballard: I object, your Honor, the witness has already answered the question. He said he does not observe other Atlantic stations.

Hearing Examiner Kolb: Cross-examination. Objection overruled.

Mr. Kelaher: You go ahead, Mr. Mapes.

The Witness: I noticed it in some of them in Atlantic City. I won't swear too much about the other dealers in Ocean City. I don't know whether he has it up there or not.

By Mr. Kelaher:

Q. In Atlantic City?

A. I have seen it in one dealer in Atlantic City.

Q. Goodyear identification?

A. Goodyear identification.

Q. Now you carried Lee tires for quite some time before Atlantic swing over to Goodyear TBA, I notice from your testimony?

A. Yes.

Q. You carried them from about September '39 3062 when you went in until about March '51?

A. I have had them for quite a while.

Q. That would be about 12 years. And were you satisfied with Lee tires?

A. Well, I never had any trouble with them.

Q. And Lee tires had a road hazard guarantee which was very good, wasn't it?

A. Lee has a road hazard.

Q. And Lee tires had good public acceptance in your area, did they not?

A. No, we didn't sell too many.

Q. Didn't sell too many?

A. No.

Q. Why at that time did you continue to handle Lee tires?

A. Well, I always had a few tires on hand.

Q. You always had Lee?

A. Yes.

Q. You said you always carried Lee.

A. Yes.

Q. Let me ask you this, was that because Atlantic was selling Lee? Was that the reason you were carrying them?

A. At the first start off when I went into business for myself, Atlantic—I was selling Lee tires and batteries and I turned around and purchased some tires and batteries from them, and I continued on with it.

3063 Q. And you just continued on as part of the Atlantic program?

A. At that time, that was the only thing that Atlantic sold in the beginning, to the dealers in South Jersey.

Q. And the reason that you were handling Lee was because that was all that Atlantic was selling at that time, isn't that right?

A. I just handled one brand. I didn't want to stock up too much because I wasn't very much in the finance field to turn around and overstock myself, which I am a little better today.

Q. The reason you were handling Lee tires instead of Goodyear at that time or some other brand, is because they were selling Lee tires?

A. Yes.

Q. Beg pardon?

A. Yes, I could get them on my credit, I mean at the time.

Q. And the reason you were handling Exide batteries at the time was because Atlantic was selling Exide batteries?

A. They were selling them and J. C. Miller was selling them too.

Q. Yes.

A. I could get them off of J. C. Miller's the same as Atlantic.

Q. And at that time you were not stocking Goodyear tires and Goodyear batteries?

A. Yes.

Q. And at that time, you were purchasing quite a number of Atlantic accessories in the Atlantic program, 3064 and that was because Atlantic was selling those accessories, isn't that so?

A. Well, I wasn't buying too many when I first started off, though.

Q. We got that.

A. I bought some off of Atlantic because my other distributor didn't sell that brand. My part of it is—on the stock of inventory—I carried those to satisfy my customers. The customer comes in and asks for a brand, if they are a steady customer of me, I get what they ask me to get, and I carry those articles.

Q. Now at the time Atlantic began to sponsor Goodyear tires were you able to buy Lee tires at a lower price back in '51, or did you pay the same price?

A. Same price.

Q. Same price from the Atlantic distributor?

A. Yes, sir.

Q. So, there was no advantage to handling Goodyear from a price standpoint?

A. No, all the standard brands of tires, don't make any difference which brand you buy, they all sell at the same price.

Q. Now if Atlantic had started to sponsor Firestone TBA in your area at that time, would you have changed over to Firestone TBA?

A. Well, I might have got some of it. I wouldn't have got too much of it, I don't care too much for Firestone products.

Q. Now, if Atlantic had sponsored—the fact that 3065 Atlantic sponsored Goodyear TBA was one of the reasons why you began to carry that; I believe you have testified to that, haven't you?

A. I bought some on that, yes, on account of Atlantic was having them.

Q. All right. Now I would like to ask you a few questions about Mr. Heald. Mr. Heald was with Atlantic for a long period of time, wasn't he?

A. I don't know, to tell the truth.

Q. Did he call on you for any length of time?

A. You see, how I come to know Mr. Heald, his two boys worked for me. That is how I come acquainted with Mr. Heald. Mr. Heald had two sons and they both worked in my service station after they had turned around and gave up their own stations.

Q. After they'd what?

A. You see, they used to have an Atlantic station themselves in Ocean City, and then after they got through there, they came and worked for me a couple of summers.

Q. Now, at the time Mr. Heald did call on you in his capacity as a representative of Atlantic, did he not?

A. No.

Q. He never did?

A. No.

Q. You were out of his area?

A. I was out of his area altogether.

Q. You met him through his sons?

3066 A. I met him through his sons.

Q. And you knew him for how long a period of time? Did you know him for many years?

A. Well, let's see. I have known Mr. Heald about two years before he started in the business for himself.

Q. You corroborated what Mr. Heald stated that you did purchase Lee tires, some Lee tires, Exide batteries, and Speedy car wash from him?

A. I bought about three Exide batteries off of him, and I don't believe I bought more than a half dozen Lee tires off of him altogether.

Q. These were just small purchases?

A. Just small purchases.

Q. And these purchases were made after Atlantic began to sponsor Goodyear TBA?

A. Yes, sir, because I had a customer that wanted Lee tires and the fellow on that sold Lee tires in Ocean City, he wanted me to pay just the same as what a customer come in and bought a tire off of him, so I turned around and wrote to Mr. Heald for the tires, he told me at the time when he was in that he had Lee tires, you see.

My first dealing with Mr. Heald was to buy Speedy car wash, that was soap that Atlantic manufactured and then they discontinued manufacturing, and he could get it through the jobbers in Philadelphia, but they came 3067 under a different name, came under Speedy wash.

Q. Now was your supervisor at that time a Mr. Cramer of Atlantic? You mentioned Mr. Cramer earlier. I am not sure just what his title was or what—

A. (Interposing.) Mr. Cramer was a supervisor. I think at the time, right at the end when I stopped buying off Mr. Heald, Mr. Cramer came down as supervisor, Mr. Cramer just about got into the territory.

Q. Was he the assistant to a Mr. Estrow, or could it have been Mr. Estback?

A. Mr. Estback was the manager for South Jersey and Mr. Cramer was Mr. Estback's assistant.

Mr. Kelaher: No further questions.

*Redirect Examination by Mr. Francis Ballard.*

Q. Mr. Mapes, I just have a couple of questions here. In the course of your direct and your cross-examination, you have mentioned the name Miller a couple of times and I want to make sure we don't get too confused.

A. J. C. Clark, he was one distributor that Atlantic had down here, then they started bringing accessories down.

And James Clark, and then Earnie Miller was another one.  
Now I don't know—

Q. (Interposing.) Who was J. C. Miller?

A. Earnie Miller.

3068 Q. Who was J. C. Miller?

A. J. C. Miller, he was one of the boys that worked  
for Atlantic Refinery, I didn't mean J. C.

Q. I know that.

A. Oh, J. C. Miller, that is the distributor in Atlantic  
City, that is from Atlantic City and Hamilton. They have  
—they are not connected with Atlantic Refining whatsoever.

Q. Is it from J. C. Miller that you buy some accessories,  
sometimes up to 60 percent?

A. Yes.

Q. Did you buy Exide batteries from J. C. Miller? Do  
you buy Exide batteries from J. C. Miller?

A. Yes.

Q. Did you buy Exide batteries from J. C. Miller before  
1951?

A. When I needed one in a hurry, yes.

Q. All right, sir. Now, there was another area of your  
cross-examination where you were talking about the early  
days when you first went into your station. Can you tell  
me whether or not tires were easy to get in those days or  
difficult?

A. Well, at times, like when the War was on, I couldn't  
get no tires at all because, you see, I didn't have authorization  
to get tires. Most of your car dealers had the tires  
at that time in place of the service stations.

Q. That wartime shortage, did that continue after the  
war?

A. No, after the war was over, then we could get tires  
again.

3069 Q. I see. After the war could you get any kind  
of tires or was it only Lee that you could get plenty  
of?

Mr. Kelaher: Objection, your Honor, I think we have gone into that far enough, myself.

Hearing Examiner Kolb: Objection overruled.

The Witness: I could get any kind of tires. I mean, whatever kind of tire a customer wanted, I would go out and get.

Mr. Ballard: I have no further questions.

Mr. Kelaher: Nothing further.

Hearing Examiner Kolb: That is all, Mr. Mapes, you are excused.

(Witness excused.)

Hearing Examiner Kolb: The hearing will adjourn until Friday at 10:00 o'clock a.m.

Hearing Examiner Kolb: The hearing will come to order.

3071 WILBUR D. GAESTEL was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name to the reporter, please.

The Witness: Wilbur D. Gaestel.

*Direct Examination by Mr. Thompson.*

Q. Mr. Gaestel, where do you live?

A. I live in Caldwell, New Jersey.

Q. Are you an employee of The Atlantic Refining Company?

A. I am.

Q. When were you first employed by The Atlantic Refining Company?

A. September 1943.

Q. Did you refresh your recollection from the company's records to determine the dates in which you have served in various capacities?

A. I did, and I have a note in my pocket to it.

Mr. Thompson: Do you mind, Mr. Kelaher, if he uses that?

3072 Mr. Kelaher: Go right ahead.

By Mr. Thompson:

Q. Refreshing your recollection from that note, will you tell us in what capacities you have served for Atlantic and during what periods of time?

A. I will be glad to.

An office clerk from September '43 to June '45.

Q. Where were you then?

A. In Newark. All my service has been in Newark, in the Newark district.

I was a general salesman from June '45 to August '46; commercial salesman from August '46 to January '47; and, a promotable dealer salesman from January '47 to October '51.

Office supervisor from October '51 to October '54, and a sales supervisor from October '54 to date.

Q. You were then a promotable dealer salesman from 1950 when Atlantic tried the Goodyear TBA plan in the Newark district on an experimental basis?

A. That is true.

Q. Do you recall the events leading up to the first experimental use of the so-called Goodyear plan by Atlantic in your district?

A. Well, I recall the meeting at which the experiment was announced.

Q. And where was that meeting held?

3073 A. That was held in the Suburban Hotel, I believe, in East Orange, New Jersey.

Q. That was in 1950?

A. I believe it was 1950, yes, sir.

Q. Have you a recollection of what happened at the meeting?

A. Well, a reasonable recollection, yes, sir.

Q. Well, would you tell us in your own words what happened?

A. Well, the meeting was held for Atlantic sales personnel and all Atlantic dealers in the Newark district and proceeded with a dinner. After the dinner the Atlantic district manager introduced to the audience various brass of The Goodyear Tire and Rubber Company and gave a very brief idea of what Goodyear was going to do. Then, Goodyear took over the meeting because it was actually their meeting and announced the program to the Atlantic personnel and to our dealers, saying that it would be on an experimental basis, that henceforth we would be handling the Goodyear TBA line in the Newark district.

Q. Who do you mean by "we"?

A. Atlantic Refining would have available for its dealers the Goodyear TBA line replacing the line of tires, Exide batteries—

Q. (Interposing.) About how many people were present at that meeting?

A. If my memory serves me, there were approximately 200 people at the meeting.

3074 Q. Did you attend as an Atlantic salesman?

A. I attended as a promotable dealer salesman.

Q. Did the other Atlantic sales people attend?

A. Yes, sir.

Q. Who was then the district manager for Atlantic in the Newark district?

A. Arthur Sanborn.

Q. Was he there?

A. He was there.

Q. What, if anything, was said to the dealers in the

presence of your salesmen about whether this plan was compulsory or at their option?

A. To my recollection—and naturally I have done some thinking about this—it was very definitely stated that it was an optional plan for our dealers, that the Goodyear line would be available if they so chose.

Q. In your present job as sales supervisor in the Newark district, is it part of your responsibility to keep abreast of competition?

A. It certainly is.

Q. Speaking first of suppliers who compete with Atlantic, are there a number of them in your district?

A. Are you referring to TBA suppliers or petroleum?

Q. I am referring now to the major oil companies who market gasoline in the area.

3075 A. I believe there are 12 or 13 major suppliers in our area.

Q. About how many gasoline retailers are there in the area?

A. In the Newark district, the district in which I serve, I believe there are approximately 6,000 retail outlets.

Mr. Kelaher: Could we have a definition of that at this time?

Mr. Thompson: I am coming to it.

By Mr. Thompson:

Q. Is there a distinction in your mind between a retail outlet and a service station?

A. There is a large distinction, yes, sir.

Mr. Thompson: Before I go further with that, Mr. Kelaher, I think it might be helpful if we have a clearer concept of what the Newark district is.

I would like this map to be marked as an Atlantic exhibit, and that will be A-15.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 15 for identification.)

By Mr. Thompson:

Q. I show you a map of the state of New Jersey, which has been identified as RX-A-15, and ask you whether that map shows the Newark district of The Atlantic Refining Company, and also the Southern New Jersey district?

A. That is true.

3076 Q. Does the large blue line which crosses the map indicate the division line between the two districts?

A. Yes, it does.

Q. Have you, or has there under your supervision, been placed upon the portion of that map which shows the Newark district certain red circles?

A. Yes, sir.

Q. What do those red circles represent?

A. They represent service stations and retail outlets that fly the Atlantic flag in the North Jersey district.

Q. When you say "retail outlets and service stations" you said before that you drew a distinction between the two?

A. Yes, sir.

Q. Would you define for us, first, retail outlet, in the sense in which you have used it, and then service station?

A. I will try, yes, sir.

A retail outlet is any spot or location that has for sale to the motoring public gasoline. Now, this could include a grocery store, pumps at the curb of a garage; it could be a new car dealer, and it could be a service station, a regular modern service station.

Q. How would you define a service station?

A. Well, I define a service station as a spot that a motorist can pull in and reasonably expect to have the majority of needs outside of major repairs for his car taken care of, and a service station would have a lubrication bay, it would have a wash bay; the motorist could expect to buy his normal TBA needs in that service station and have minor work done on his car.

I exclude major repair work. I do not consider that part of the service station.

Q. When you hereafter in your testimony refer to service stations, will you be meaning service stations, the sense in which you have just defined it?

A. That is true, yes, sir.

Q. Do these red circles indicate Atlantic service stations in the northern district of New Jersey, sometimes call the Newark district?

A. They indicate both Atlantic service stations and retail outlets.

Q. Are there some retail outlets on this map which are not service stations?

A. There are.

Q. Are there also on that map indicated by red circles some contract stations which are not owned by Atlantic?

A. Yes, sir.

Q. You referred to approximately 6,000 retail outlets in your district?

A. That is right.

Q. Approximately how many of those outlets would 3078 be service stations in the sense in which you have defined it?

A. I am afraid I would be a little leery about venturing an opinion because it would have to be an opinion. I am sorry; I cannot—

Q. (Interposing.) It would just be a guess?

A. It would have to be a guess; I could not tell you.

Q. Before I come to that, was there a change made in the geographical area of the Northern New Jersey or Newark district some years back?

A. Yes, sir.

Q. What was the change? Can you indicate on this map?

A. There is a certain area in the western part of the

state that was originally associated with the Eastern Pennsylvania region, the Allentown district, and it was decided to take that part of the country and make it all part of the Newark district.

Q. When did that change occur?

A. As near as my recollection, it would be in the area of 1950.

Q. Was it before or after or contemporaneous with the Atlantic experiment in your district under the Goodyear TBA plan?

A. To my memory, they both occurred pretty near the same time. It was almost coincidental.

Q. What was the reason for the change in the district? Did it have anything to do with the TBA experiment?  
3079 A. To my knowledge it had nothing to do with the TBA experiment.

Q. How many stations does Atlantic own and lease in your district?

A. I am sorry, I missed the first word. "How many" did you say?

Q. How many service stations do you own and lease?  
A. 133.

Q. So that you have 133 leases?  
A. That is true.

Q. Can you, by use of that map, indicate in a general manner where the Atlantic leased stations are located?

A. Well, they would be in any part of our district. We have every part of the state, we do own stations and lease them, but there is no particular area confined to just Atlantic-owned stations.

Q. Is there a high concentration of leases in the area of the city of Newark?

A. Yes, sir.

Q. And in other large cities in Northeastern New Jersey?

A. Yes, but we do have the contract as well.

Q. Would you read me the answer, please.

(The reporter read the answer.)

By "the contract as well," you mean you do have contract outlets?

3080 A. Yes, sir, and in the area you mentioned.

Q. Do you know how many contract service stations you have in the district?

A. We have a total of 168 stations; 133 are leases.

Q. And the balance are contract?

A. Yes, sir.

Q. Now, are you distinguishing in stating the balance between retail outlets and service stations, or are they all service stations?

A. They are both, both retail outlets and service stations in that balance.

Q. But my question is: about how many real service stations are operated by contract operators as distinguished from leases?

A. Fifteen.

Q. So that confining your answer to service stations, you have 133 lessee outlets and 15 contract operators?

A. That would be it; yes, sir.

Q. That would make a total of 148 service stations?

A. Yes, sir.

Q. You have in your district, I believe, no service stations operated by wholesale distributors?

A. We have no wholesale distributor service stations.

Q. As sales supervisor, to whom do you report in the organization?

3081 A. I report to the district manager.

Q. What is his name?

A. His name is Leslie Geer.

Q. Are you in effect second man in the district?

A. Yes, sir.

Q. At the present time is Mr. Geer away from the office?

A. Mr. Geer is on vacation right now.

Q. And in his absence do you act as district manager?

A. I am acting district manager at the present.

Q. As sales supervisor, is it part of your function to know and to enforce Atlantic's policies in your district?

A. Yes, sir.

Q. What is the primary responsibility of the sales supervisor?

A. Well, my primary responsibility is to promote the sale of gasoline to our service stations and retail outlets.

Q. How many sales personnel report to you or act under your supervision in your district?

A. I have 11 sales personnel, 11 men that report to me.

Q. And what are they called? What are their titles?

A. Well, I have—

Q. (Interposing.) Are some of them promotable dealer salesmen?

A. I have seven promotable dealer salesmen; one dealer salesman; and, three service salesmen.

3082 Q. Does the so-called dealer salesman, of which I believe there is one, sell Atlantic products to service stations?

A. Not as we have defined service stations.

Q. His responsibility is primarily the contract retail outlet, which is not big enough to be a service station?

A. That is true.

Q. Turning now to your so-called promotable dealer salesmen; do they handle both lessee stations and contract stations?

A. Yes, sir.

Q. Is it part of your responsibility and function as sales supervisor to keep these lessee stations manned with operators?

A. Yes, sir.

Q. Is that a difficult or easy thing to do?

A. That is a rather difficult and time-consuming job.

Q. Do you find qualified lessees easy or difficult to get?

A. Very difficult.

Q. Do you find in your district that there are more service stations than there are qualified dealers?

A. Unfortunately, yes.

Q. Are you in competition with the other major oil companies for lessees?

A. Yes, sir, tense competition.

Q. Also, in competition with them for the right to supply the contract service stations?

A. Yes, sir.

3083 Mr. Kelaher: Beg pardon! What was that question?

(The reporter read the question and answer.)

By Mr. Thompson:

Q. You have referred to qualified lessee or qualified dealer. How would you define that kind of a person?

A. You mean our method of searching them out?

Q. No, I said how would you define a good dealer?

A. How would I define?

Q. What are the requisites of a good dealer?

A. Well, the requisites of a good dealer: Number 1, that he be intelligent, be a good manager—both of any employees he might have, his own finances—he must be sober, industrious, hard working; must be sales minded, able to meet people; in fact, must like people to be able to sell; must have the backing of his wife and family, the necessary finances to enter our business; must be willing and eager to make himself a part of his local community, to serve his community in any function that it might be necessary. Offhand, those are some of the immediate requisites that I think of.

Q. What do you find in your district that an Atlantic lessee dealer who meets those specifications can net a year out of the operation of one of your stations?

A. I would say an average from possibly nine or ten to fifteen thousand dollars.

Q. Are some of them higher than that?

3084 A. Yes, sir; there are dealers who make more than that.

Q. Do you find some who make over \$20,000 a year?

A. Yes, sir.

Q. When you get a qualified dealer, is it your objective to keep him, or would you just as soon let him go away?

A. Pardon me for smiling. When I have a qualified dealer, I will do anything to keep from losing him.

Q. Why should that be so?

A. Well, I stated earlier they are extremely hard to find. The competition for good dealers is very intense in the Newark district. If we find one who is qualified, we certainly wish him to become an Atlantic dealer.

Q. Is there any expense involved in the replacement of a lessee?

A. Yes, sir.

Q. Have you made any analysis, yourself, of what that expense is? Do you know what it is in your district?

A. Actually, to dollars and cents, no, I haven't, but I know it is a very time-consuming job for both the salesman and myself and for our service salesmen. Would you like me to elaborate a little bit?

Q. Yes.

A. Well, we spend—

Q. (Interposing.) No, I am talking about expense now.

What is the expense involved? You mentioned time  
3085 of sales personnel and finding a lessee.

A. Yes, sir.

Q. When you get an inexperienced prospect, do you send him to training school?

A. Yes, sir. And that is a very expensive venture.

Q. If he passes the training school and starts a station, do you put a service salesman in to show him what to do for a couple of weeks?

A. In every case, yes, sir.

Q. When you lose a lessee, do you or do you not lose gallonage?

A. I would say yes in every case we lose gallonage with the loss of a lessee.

Q. Have you, from your own experience, as sales supervisor in Newark, had situations where a qualified lessee was taken away from you by a competing company?

A. Too often, yes, sir.

Q. In such case, do you or do you not find that he can take a substantial part of his gasoline gallonage to your competitor?

A. Depending on how far away his new location is. If it is reasonably near, of course, he can murder us by making such a move.

Q. When you say "murder" you, you mean take his local trade with him?

A. Yes, sir.

Q. Do you find in your area that your dealers 3086 develop their own personal and local business?

A. Yes, sir.

Q. Would you say that your lessee dealers are dependent upon Atlantic for their living in your district?

A. No, sir. Very definitely no. Any qualified dealer, if I may expand, certainly could not be dependent upon Atlantic because our competitors are constantly aware of our dealers. They know which of our dealers are good and which are mediocre, and there are always service stations available for a good, qualified dealer. So, he is not depend-

ent upon Atlantic. We feel, and experience has proven to us, that people do not buy companies, they buy from individuals. They buy from a dealer, not the brand of gas, but they buy from Charley and Joe, or whoever might own or run the service station.

Q. I don't suppose you are inferring that Atlantic Imperial is not the best brand of gasoline?

A. Not at all. But not everybody knows that.

Q. Seriously, Mr. Gaestel, when you lose a lessee, what are the principal reasons which cause the termination of the relationship?

A. Well, there could be many reasons. It could be a matter of dealer mismanaging his own service station and thereby getting himself in financial difficulties; it could be a matter of its being an ill choice for him to go into our type of business because it is a demanding and time-consuming business; it could be a matter of family pressure, the wife not enjoying the idea of her husband being away from home pretty frequently.

There is a multitude of reasons for which we lose a man. Competition, of course, is constantly attempting to raid our dealer force and steal our dealers. Occasionally, illness or death strikes. There are many reasons.

Q. Is my recollection correct that you told me that you were presently looking for a replacement because of an unfortunate accident to one of your good lessees?

A. Well, I have been fortunate enough to get the replacement, in fact, it is taking place today.

Q. What happened to the man that you had to replace?

A. Well, the man that I had to replace struck a tree at a speed of about 70 miles an hour, and, of course, was killed. His car, lost control.

Q. Since you have been sales supervisor, have you had any occasion to terminate any lease during the term of the lease for cause?

A. You mean, have I forced a cancellation?

Q. Yes, has Atlantic forced a cancellation?

A. In one case that I can recall.

Q. What was the reason?

A. The man was running everybody but a service station. It was a welding shop, a steam cleaning shop; it was everybody but a service station, and we moved in and 3088 requested, and after a good deal of discussion, obtained a mutual cancellation of the lease.

Q. In other cases—I am generally speaking—has the termination been requested or instigated by the lessee?

A. I would say in over 99 percent of the cases. I happen to recall the one that we requested cancellation.

Q. Have you ever, in your district, since 1950 when you started on the Goodyear plan, cancelled or failed to renew a lease because your lessee did not handle sponsored TBA?

A. In no case, no, sir.

Q. Have you ever threatened to cancel or fail to renew a lease for TBA reasons?

A. No, sir.

Q. You said that new lessees were hard to find or difficult to get, or words to that effect, in your area. When you have to get a replacement at one of your service stations, what is your procedure? What steps do you take to try to find a prospect or a candidate for the station?

A. Well, newspaper advertising, of course, immediately.

Q. May I interrupt you for a second?

A. Yes, sir.

Q. You have been either a promotable dealer salesman or an office supervisor or sales supervisor in the Newark district since 1947, have you not?

A. Yes, sir.

3089 Q. Confining your answer to the period 1950 to date, has your office from time to time placed adver-

tisements in numerous papers looking for prospects to operate your service stations?

A. Almost constantly, yes, sir.

Q. Did you at my request procure from your office some samples of such advertisements which have been inserted in the New Jersey papers?

A. Yes, sir.

Mr. Thompson: Mr. Kelaher, I have a large number of them. I have just picked out two as illustrative. Let me have these marked, please, for identification.

(Whereupon, the documents referred to were marked Respondent's Exhibits (Atlantic) 16-A through -D, and 17 for identification.)

Mr. Kelaher: I wonder if we could have the years or dates established on some of these.

Mr. Thompson: I will. I haven't shown them to him yet.

Mr. Kelaher: All right.

By Mr. Thompson:

Q. Mr. Gaestel, I show you RX-A-16-A, -B, -C, and -D, and ask you whether those exhibits contain clippings from newspapers, as indicated on the exhibits, which are part of the files of the Atlantic Newark district office (handing documents to the witness)?

3090 A. Yes, sir.

Q. Now, these ads were inserted in the year of 1952, were they not?

A. I would say that, yes, sir. 1952.

Q. This is a 1952 ad file from the Newark office?

A. Well, every ad that we have cut out we have dated as well; so, if that says 1952, yes, they are from the 1952 file.

Q. I call your attention to the fact, sir, that RX-A-16-A is clipped to RX-A-16-B. 16-B is dated in May 1952 but no specific date appears upon 16-A. Do you know whether 16-A was also a 1952 advertisement?

A. Yes, it would be, because of the name Mr. Dunham here. He was an office assistant in 1952, sales supervisor, and consequently took telephone calls from the telephone inserted in the newspaper; so, he was there in 1952.

Mr. Thompson: I offer RX-A-16-A through -D in evidence.

Mr. Kelaher: May I ask a question?

*Voir Dire Examination by Mr. Kelaher.*

Q. Was Mr. Dunham sales supervisor for any period other than 1952?

A. Mr. Dunham has never been sales supervisor. He was an office assistant, sort of a male secretary.

Q. Was he an office assistant or male secretary for 3091 other a period of 1952?

A. It would have been a little bit of 1951. Yes, sir.

Mr. Kelaher: Your Honor, I have no objection to clippings which have specific dates, but there are some which are undated.

Mr. Thompson: There are two, here, sir, which are not dated.

Mr. Kelaher: I object to those.

Mr. Thompson: If Mr. Kelaher objects to the fact that they are not dated, and I am unable to specifically prove at this time that these ads appeared in the indicated papers in May of 1952, it will be necessary for me at some later date to call somebody from the Newark office to establish that fact. Do you persist in your objection, Mr. Kelaher?

Mr. Kelaher: I am not clear on that—

Hearing Examiner Kolb: (Interposing.) Is the purpose of this testimony to show the difficulty or what steps were taken to get dealers?

Mr. Kelaher: I am not clear what the purpose is.

Mr. Thompson: It has a double purpose. One purpose is to establish the difficulty of finding a lessee in the Newark

district. The second purpose is to show that it is represented by Atlantic to the dealers in the ads in which we seek to get them to come to our office for an interview that if they become an Atlantic lessee, they run their own 3092 business and they are their own boss.

Mr. Kelaher: I think dates have some significance.

Hearing Examiner Kolb: What difference does it make whether it is 1951, '52, '53, or '54? I will overrule the objection. The document will be received in evidence, Respondent's Exhibit A-16-A through -D will be received.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 16-A through -D for identification, was received in evidence.)

*Direct Examination (resumed) by Mr. Thompson.*

Q. Mr. Gaestel, I show you RX-A-17 and ask you whether the nine clippings pasted on that page are part of the records of the district office in Newark?

A. Yes, sir.

Mr. Thompson: Now, Mr. Kelaher, on each of these ads the date is specifically indicated by the office; so, I think there would be no problem.

Mr. Kelaher: No problem with those.

Mr. Thompson: I offer in evidence RX-A-17.

By Mr. Thompson:

Q. Now, Mr. Gaestel, the first sample ads I showed you were dated in 1952. This group of ads are dated in part in 1957 and in part in 1958. My question is whether these ads are merely illustrative and samples and whether similar ads were placed in the papers by Atlantic during the entire period from 1950 to 1958?

A. They are illustrative, yes, sir. That form of 3093 advertising for dealers has not changed. The problem has been the same since '51-'52.

Mr. Thompson: Now, with Mr. Kelaher's permission—  
Hearing Examiner Kolb: (Interposing.) Do you want  
that received in evidence?

Mr. Thompson: Which?

Hearing Examiner Kolb: That A-178.

Mr. Thompson: Certainly.

Hearing Examiner Kolb: The document will be re-  
ceived in evidence as Respondent's Exhibit A-17.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 17, for identification, was received in evidence.)

Mr. Thompson: May I, please, sir, substitute photostats  
for the originals, since these are part of our office records?

Hearing Examiner Kolb: Photostats may be substi-  
tuted for the originals.

By Mr. Thompson:

Q. Sir, when we got into a discussion of the type of  
ad used by Atlantic in your district, you have testified that  
newspaper ads was one method used to locate prospective  
dealers. What other things do you do there to try to find  
dealers?

A. As I mentioned earlier, competition raids Atlantic  
stations. We, in turn, seek to entice competitive  
3094 dealers to take our service stations. We look amongst  
our own service stations for good employees of  
dealers. We look amongst the competitive service stations  
for their best employees, their night man—they might  
have a good night man. Dependent upon how successful  
we are with the first steps, we contact local business people  
in the area in which our service stations are located. We  
will speak to high school principals, local police departments,  
ministers, priests, clergymen, to be brief.

Q. Clubs and organizations?

A. Clubs, the Lions is right there; we leave very little  
unturned.

Q. For Mr. Kelaher's benefit, do you solicit the Knights of Columbus?

A. Being a member of the Knights of Columbus, yes. That goes for the Elks as well.

Q. Now, assuming as a result of these efforts that you did locate a prospect or two, what is the screening process used in your district to ascertain whether he will be a good service station operator, whether you can induce him to try the job? What happens? What is the procedure?

A. Well, the initial screening, of course, is done by the salesman, and he weeds out the immediate unlikely prospects, and it is up to him to ascertain which of his prospects would be most likely to make a good dealer. He then 3095 sets up an appointment with sales supervisor, myself, and I sit down with the prospect either in the field—but most often right in our own district office—and interview the prospect. Then, if both the salesman and myself are satisfied that a prospect would make a good dealer, the prospect is then presented to our district manager, Mr. Geer, for an interview and his approval. And if our district manager approves, why, then, of course, the prospect is notified and arrangements are made to select a date for a change-over.

Mr. Thompson: I now ask that this book be identified as RX-A-18.

(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 18 for identification.)

By Mr. Thompson:

Q. I show you a book identified as RX-A-18 with a little label on it saying "Number 2" on the inside cover and ask you whether this—I will ask you what book is (handing document to the witness).

A. Well, that is my interview bible.

Q. Is that your personal copy of that book?

A. This is my personal copy of that, sir.

Q. And you know that because of the "Number 2" which is on it?

A. Yes, sir.

Q. Mr. Geer, I assume, would have "Number 1"?  
3096 A. That is right.

Q. And is that book—is a copy of that book identical in its context in the possession of each of your salesmen?

A. Yes, sir.

Q. How long has this particular book been in use in your district?

.. A. Sometime early in 1955, if my memory serves me.

Q. What use is made by you and your salesmen of its counterparts?

A. We use the book as a guide and a pattern in interviewing the prospect. The book is placed in a dealer prospects hands. The salesman, of course, goes over it with the prospect point by point. There are many questions in there that we want a dealer prospect to ask himself. I think in the front part of that book you will find that. Then, when the prospect is brought into the office again, the prospect sitting across my desk, we go over the book again. Many times before I sit down with a prospect, because of delays that I am forced to incur, I hand the book to the prospect to have him read and he can formulate any questions he might have. It helps us lay out a pretty clear pattern of the service station business and what it can mean to a prospect. And it keeps Atlantic personnel pretty well on the track to make sure they cover the points that this man should be advised of.

Q. On the occasions when you personally go over 3097 this book with a prospective lessee, about how long does it take you to do it?

A. Depending upon the individual and how thoroughly

the salesman has gone over it, it can be anywhere from one to three or four hours that I can spend on an interview, and, of course, that book is a good part of it.

Q. Of course, I don't want you to spend either one or four hours discussing the content of this book, but I would like you to take it and simply indicate in a general manner by reference to pages and the numbered questions contained in this book how you would go about your interview with a prospective lessee? What do you emphasize? What points are made?

A. Well, I have certain favorite questions, things that I want to get across, and I first off ask the prospect if he has gone through the book in its entirety. And, then, there are certain questions I want the—

Q. (Interposing.) Excuse me a moment, sir: I am going to give Mr. Kelaher a copy so he can follow your testimony. (The document was handed to counsel for the Commission.)

Go ahead, sir.

A. In my interview with the prospect, using the book and having the book for the prospect to see, there are certain questions I want his direct answers to. Of course, I would have to call it, I guess, page two.

The first question, "Do you like being your own 3098 boss?" And then, I want to know why the prospect wants to be his own boss, and I bring up the meeting people, which would be item number two, question number two on here, "Is your attitude right?" And, of course, we discuss attitude, and the vicissitudes of people that come into service stations, dispositions of people, and I want to be reasonably assured that our dealer prospect is a man that will not automatically be a grouch, because the customer is a grouch, be reasonably sure that his attitude is going to be pleasant.

And, of course, question number five is extremely im-

portant, that is, "Do you have backing at home?"—"Do your parents approve?" "Does your wife approve?" We have lost many dealers because of unhappy wives; so, it is something I request that my prospect consider carefully, because going into our business—

Q. (Interposing.) Wives get unhappy because of the dealer's hours?

A. The hours, mostly, the fact that they miss meals constantly and they are dragged out of bed sometimes in the middle of the night because some customer is broke down within a reasonable distance, or very early in the morning because somebody's battery won't turn over. It is a hectic life at times.

Then, of course, question number six, "Are you financially sound? I want to be reasonably assured that 3099 my prospect can financially afford to take over the service station business.

Then, the following page I go over the things that the service station business can mean to the prospect, that he is independent, that he is his own boss, that he is responsible for the operation of his own business; he is going to have to do his own hiring, his own training, his own firing; the products he sells, the amount of money he makes in this business is entirely up to him; that he is an independent businessman and he is going to either make it or break it. The way he operates his business—although we are ready to stand by with whatever assistance and whatever counsel we can give—but in the final analysis, and I am talking now as I would talk, I am afraid, depends upon his own, whether he is a self-starter, his own initiative and his own drive, his own personality. He is the man that is going to decide the success or failure of his business.

Mr. Kelaher: Your Honor, with respect to this testimony which is getting a little long, is he supposed to be

testifying to what he asks the interviewee or the applicant, or are we going off into his reasons for asking these questions? It seems that we are covering a much broader area than the question calls for.

Mr. Thompson: Is that an objection?

Mr. Kelaher: I am going to object to further 3100 answer. As I understand the question, you asked him what he goes over with the applicant.

Mr. Thompson: To eliminate the necessity for a ruling by his Honor, I will ask the witness to confine the balance of his answer to what points he goes over with the prospective lessee and what is the subject matter of the conversation between them.

The Witness: I am afraid I do not miss any part of the book. I cover the book pretty thoroughly in my interview. That is part of my responsibility, and, of course, it is a way that I have of determining—it helps me determine whether my prospect is someone I want as an Atlantic dealer.

By Mr. Thompson:

Q. In the course of your discussion, is TBA mentioned?

A. Well, in the latter part of the book we have our no forcing letter, yes. TBA is mentioned, number one, as to Atlantic's supply position, the fact that we in the Newark district handle Goodyear TBA. We explain that Goodyear has set up suppliers in different areas to cover different dealers and service stations. We discuss, of course, the Goodyear line, the quality, the fact that they are competitive and priced right. And on TBA there is in the latter part of this book, a copy of our no forcing on TBA letter that Mr. Estlow, our regional manager, has signed, and, of course, we discuss that in our conversation with our dealer prospect.

3101 Q. What is the discussion on that letter, Mr. Gaestel?

A. Well, I have all prospects that I am beginning to feel favorable toward read the letter, any prospect that we decide on reads the letter while going through the interview. If half way through the interview I feel that the prospect would not make a good dealer, why, I, as nicely and tactfully as possible, bring the interview to a halt and stop, since it does involve time—a good interview involves a lot of time. But any dealer that I have any serious consideration for, any prospect rather, does read the no forcing letter.

Q. Now, the no forcing letter to which you refer is the Estlow letter of June 24, 1955, which has been introduced in this case previously as CX-207. Is a copy of that letter in the book of every salesman?

A. Yes, sir.

Q. In other words, this isn't your special copy. The salesman's books are identical with yours?

A. That is right.

Q. In the back of this book there are several mimeographed sheets marked for salesman's use. I will call your attention particularly to the page entitled "For Salesman's Use, Questions and Answers" and ask you whether in your interviews with prospective lessees you refer to questions and answers three, four and five?

A. Yes, sir.

3102 Q. Now, question number three is: "Will I be thrown out after I build up the business of my station?" What answer does Atlantic give the prospective lessee to that question?

A. Would you like it in my words or in the words of the book?

Q. I would like it not in the words of the book, which, of course, is obvious, but I would like to know what you say to the dealer and what you, as sales supervisor, have your salesmen say in answer to that question?

A. Of course, to us the answer is the very obvious. We know how hard it is to get qualified dealers. We know how much it costs us to lose a successful dealer; so, we very definitely assure any prospect that the chances of his being thrown out of a service station after building a successful business are absolutely nil, that Atlantic wants and needs good dealers and very definitely would want to, at all times, keep any dealer who had been successful and, of course, we readily admit to any prospect that the dealer controls the business, not the Atlantic brand, not the flag, that it is his own personal business and we can not afford to lose any.

Q. What answer do you give to question number four: "Am I forced to handle your TBA line?" I am interested now in what you say and what you instruct your salesmen under you to say, not what the book says. That is printed; that is in the record.

3103 A. Well, the question, "Am I forced to handle your TBA line?", we instruct, of course,—my salesmen have heard this pretty repeatedly; in fact, any time we have a push on any TBA item they are again re-instructed that they sell and not to try to force any dealer to buy. But we outline to any prospective dealer the fact that we handle the Goodyear line, that it is a quality line. We also advise them that they are independent businessmen and in no way are they forced to handle the Goodyear line. We try to point out the advantages of handling the line, but that in the final analysis the choice of whether they handle Good-year or XYZ brand becomes solely theirs.

Q. Now, the next question to which I call your attention relates to whether the dealer must stay open on Sundays, and what hours he must be open. What do you tell him in answer to that question?

A. Well, I tell any dealer prospect that we, Atlantic Refining Company, do not and cannot set a specific rule on hours of operation for any group or any individual station;

that the hours of operation of the service station are set by two means: Number one, and most important, by the customers—when they want to buy their product—and, number two, by the competition. I am talking about the competitive service stations. They, and not Atlantic Refining Company, decide what are the proper hours of operation for any given service station.

3104 Q. I call your attention, Mr. Gaestel, to the fact that while you promote the Goodyear line in the Newark area, your own book contains a picture of a Firestone tire.

Mr. Kelaher: I was wondering how that slipped in there.

The Witness: I have seen that before.

By Mr. Thompson:

Q. Contrary to the inference just made by Mr. Kelaher, did you slip that in this book, that picture of the Firestone tire?

A. That has been in this book since the inception of this book; it has been in my book since I have had it.

Mr. Kelaher: I think counsel understands I wasn't making any inference.

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Thompson: I offer in evidence RX-A-18 in its entirety.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received as Respondent's Exhibit A-18.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 18 for identification was received in evidence.)

3105 By Mr. Thompson:

Q. Now, you testified, sir, that this book commenced to be used by you and your salesmen in the early part of 1955. Prior to 1955, that is to say, from 1950 to 1954, how did you handle these interviews with prospective lessees without having the use of that book?

Mr. Kelaher: Your Honor, at this time I am going to make an objection, because I do not think he can talk from his personal knowledge. He was the office supervisor during most of that period from October '51 to October '54.

Mr. Thompson: If your Honor please, this gentleman was a promotable dealer salesman handling lessee accounts and contract accounts until October of 1951, and I now ask you Mr. Gaestel, whether you have personal knowledge of what was said to prospective lessees during the period 1950 and up until October 1951?

The Witness: Yes, sir.

By Mr. Thompson:

Q. As a promotable dealer salesman, was it part of your function to interview prospective lessees?

A. I interviewed them, of course, at the salesman's level.

Q. Right. And you took them to whoever was then your sales supervisor for another interview?

A. Yes, sir.

Q. During the period from October 1951 until 3106 October 1954 while you were serving as office supervisor, were you or were you not personally familiar with the method of interviewing prospective lessees, and what was or was not said to them during the interview?

A. I was very familiar with what the type of interview used while I served as office supervisor.

Q. What was the nature of the interview during the

period from 1950 until this book came into use in your district?

A. The nature of the interview is basically the same, without its fancy cover and without its very nice coloring pictures, but the context—we had a paper bound form of outline that we used in the Newark district. My predecessor, as a sales supervisor, was a good deal responsible for this fancy edition in his present job after he left the Newark district. The responsibility of this book, this came from your original interview book.

Q. More specifically, what were you salesmen instructed to say and what did you salesmen say with respect to TBA before this book came into existence?

A. There has been no change in our policy as far back as I can remember.

Q. Before this book came into existence, did you orally, and without pointing it out on a page of a written book, explain the Atlantic TBA policy to prospective lessees?

A. Very definitely, yes, sir.

3107 Q. Until the summer of 1955 there was no such thing as the Estlow letter because that was written in the summer of '55?

A. Yes, sir.

Q. Did you and all of your other salesmen have as a part of your permanent file a copy of Mr. Colley's 1951 no forcing letter, which has been offered in evidence in this case as CX-150 (handing document to the witness)?

A. Yes, sir, every Atlantic salesman or sales personnel are very familiar with that letter.

Q. Did you all also have the second Colley letter, called a restatement of Atlantic TBA policy, CX-206 (handing document to the witness)?

A. Yes, sir.

Mr. Thompson: May I go off the record for a second?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

We will recess at this time.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

Mr. Thompson: If your Honor please, I inadvertently omitted to offer in evidence RX-A-15, which is the New Jersey map referred to by Mr. Gaestel in his testimony, and I now offer it in evidence.

3108 Mr. Kelaher: May I ask him one question on this with respect to the meaning of the red dots?

Mr. Thompson: Surely.

*Voir Dire Examination by Mr. Kelaher.*

Q. Do the red dots indicate that—let me put it this way: is there one red dot on for each Atlantic service station, or does that just represent a town or location where there are Atlantic service stations?

A. There is a dot for each retail outlet.

Hearing Examiner Kolb: Any objection?

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A-15.

(Whereupon, the document, heretofore marked RESPONDENT'S EXHIBIT (ATLANTIC) 15 for identification, was received in evidence.)

Mr. Thompson: And if your Honor please, I should like to return, if I may with Mr. Kelaher's permission, to Mr. Gaestel's personal copy of the book entitled "What A Service Station Can Mean to You" and substitute a copy.

Hearing Examiner Kolb: It may be substituted.

*Direct Examination (Resumed) by Mr. Thompson*

Q. Mr. Gaestel, you have referred to and have de-  
3109 scribed Atlantic's no forcing policy in your district.

Are you familiar with the manner in which TBA is dealt with and treated in the training schools to which the new lessees in your district are sent?

A. Yes, sir; I am reasonably familiar with it.

Q. Do your new employees who are going to be service salesmen attend training schools with new lessee dealers?

A. Yes, sir.

Q. And do they go to the same classes?

A. Yes, sir, they both take the five-week training course, both our dealer prospects and our service salesmen. That is part of their training, the exact five-week course.

Q. What is said at those training schools with respect to the freedom of the dealers or lack of freedom that they can buy whatever TBA they want?

A. Naturally, I cannot quote the person that gives the discourse on TBA, and our policy regarding TBA, but I know it goes on for several hours, and the fact that any dealer, any Atlantic dealer, has free choice in his designation or selection of a brand, whether it is "T", "B" or "A" is brought out very definitely. The statement is made that while we handle and sponsor a line of TBA, it does not mean in any way that the dealer must buy that sponsored brand of TBA, but he is free to make his own choice.

Q. So that is told to them at the training schools, 3110 then again by the salesman who interviews the lessee as a prospective dealer?

A. Well, the salesman, of course—

Q. (Interposing.) I beg your pardon. That would have happened first, would it not?

A. That would have happened first.

Q. Then, that is repeated by you when you interview them?

A. Yes, sir.

Q. Then, if the district manager also interviews the prospective lessee with you and the salesman, does he repeat the same information?

A. Yes, sir.

Q. Then, they receive it gain at the training school?

A. In the training school, yes, sir.

Q. When a lease is sent to the prospect, is the no forcing letter sent with the lease in your district?

A. That is part and package of every lease, yes, sir.

Q. Are there a number of jobbers offering TBA in your district?

A. Yes, sir; there are a good number. Are you talking about competitive jobbers?

Q. Yes, sir.

A. Yes, sir, a good number of competitive jobbers in the Newark district.

Q. By a good number, do you mean a large number?

3111 A. I mean a large number.

Q. Do you find that when you install or place a lessee that Atlantic and Goodyear have competition from other jobbers for the original stocking order of TBA?

A. Yes, sir.

Q. Does Atlantic always get the order?

A. No, sir.

Q. Who does get the order? I mean, how do you know who gets the order?

A. Well, naturally, we can tell if one of our Goodyear suppliers get the order because the salesman is on the scene and will take the order. And if our salesman does not get an order, naturally, the dealer buys outside merchandise itself on display, and, of course, the salesman sees it and knows that someone else has beaten him to the punch.

Q. Why do you have an Atlantic TBA-program in the Newark district at all?

A. Why do they have the Atlantic TBA program?

Q. Yes.

A. TBA is an essential part of the service station business; it is a necessity for dealer survival in my opinion. Naturally, customers today want to make their automotive purchases pretty much on a one-stop basis. They want to be able to go to one place to buy their gasoline, have their oil changed, to buy their tires, their batteries, their 3112 fan belts. Of course, the list is endless. Consequently, the dealer who is able to offer these services has a far greater chance of building his business to a much more successful extent.

Q. Is there any advantage to Atlantic in promoting the Goodyear TBA line?

A. Yes, sir.

Q. What would you say the advantages were to Atlantic?

A. Well, of course, Atlantic Refining Company has always been proud of the quality of its products. We have a policy, a sales policy that states, if I can remember it word for word, that no competitor will top the quality or performance of Atlantic products. We are definitely a quality company. Now, we are conscious of the quality, of course—I have to speak for the Newark district—of the Goodyear products, and we like to see quality products sold in our service stations. We know that our dealers can sell with more assurance a quality product and make their own selling job much easier.

Q. From your many years of sales experience have you formed an opinion whether a good brand of TBA helps the oil company's gasoline gallonage?

A. Well, yes, sir; the two go hand in hand. Naturally, the more customers a dealer is able to accrue to his sta-

tion, why, the more gasoline gallonage he will have and a man that is in the position of giving good one-stop service will have definitely a better share of his local market 3113 versus the man who possibly just sells gasoline or motor oil. So, consequently, more customers mean more gallonage, and more product for Atlantic, and that is our prime desire, to sell more gasoline and motor oil.

Q. If you were able to do so, would it not be good business for Atlantic to force its dealers to buy Goodyear TBA?

Mr. Kelaher: Objection—not objection—but I wonder if I could have that question read. I didn't catch the first part of it.

Hearing Examiner Kolb: Read the question.

(Question read.)

The Witness: Well, of course, we are not able to do so, and I have to venture an opinion. But I do not believe so. I have been salesman a long time, and I think selling is much easier and much more successful on a good, sound, selling basis, which certainly would leave any forcing out of it.

Does that answer your question, Mr. Thompson?

By Mr. Thompson:

Q. Yes, sir. Is it part of Atlantic's routine to make inspections of its leased stations?

A. Yes, sir. It is.

Q. Do reports of such inspections pass over your desk? Do you see them?

A. I see them all, yes, sir.

Q. Are the inspection reports concerned with the 3114 brand of TBA carried by the lessee dealer?

A. Never.

Q. What is the Atlantic policy in your district when a lessee checks out and is replaced by another dealer with

respect to the TBA stock of the outgoing dealer? Do you give any advice to the incoming dealer about whether he should or should not buy whatever stock is at the station?

A. Well, yes, sir. We recommend the incoming dealer buy all salable merchandise, all salable TBA merchandise. When I say salable, I mean that is in condition that a customer will buy it. It isn't beat up or abused or in reduced cans or anything else.

Q. You make that recommendation regardless of the brand of TBA which is in the stock?

A. Yes, sir, regardless of the brand.

Q. Can you tell us from your experience how the incoming and outgoing dealer determines the price of the TBA which is to be sold by the outgoing dealer and purchased by the incoming dealer?

Mr. Kelaher: I wonder if we can have that read again. It is a little complicated.

Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

The Witness: Well, by using up-to-date price sheets on the merchandise. That is the basis of the price.

3115 By Mr. Thompson:

Q. Do I understand, then, that the outgoing dealer gets the going price for the salable items which he has in his station?

A. Yes, sir; he gets the going price.

Q. Is it your practice in your district to finance the TBA stock of a new dealer?

A. No, sir; it is not.

Q. If you finance an incoming dealer or a new dealer, is your financing limited to equipment and Atlantic petroleum products?

A. It is limited to equipment.

Q. So that in your district you don't even finance gasoline or motor oil?

A. We do not finance product. We finance equipment in my district.

Q. I notice, Mr. Gaestel, in the book which is used with prospective dealers that under the topic "Independence" and after stating, "You are the boss and do the hiring and training," that there is a further reference to hours. The statement is, deleting unnecessary words "You set hours, figure out what to buy and sell." Would you comment upon the policy in your district with respect to hours of operation by lessee stations?

A. Would I comment upon it?

Q. Yes, would you comment on what is your policy with respect to hours of operation by lessees?

3116 A. That the competition sets the hours, that we request our dealers to be competitive in their hours of operation.

Mr. Kelaher: What was the answer, please.

(The reporter read the pending answer.)

By Mr. Thompson:

Q. In your capacity as sales supervisor, do you visit dealers in the field?

A. Yes, sir.

Q. Does that answer apply to lessees and your contract dealers who operate service stations alike? Do you visit all of them?

A. I visit all dealers whether they be lessee or contract, yes, sir.

Q. All dealers who operate service stations?

A. All dealers who operate service stations and retail outlets, yes, sir.

Q. Do you manage to get around to the small retail outlets also?

A. Infrequently, yes, sir.

Q. But you visit your lessee dealers and contract dealers who operate service stations regularly?

A. Yes, sir.

Q. How often do you get to see those dealers?

A. Well, a minimum of, I would say, probably a minimum of two to three times a year. Naturally, there 3117 are others that I do see more frequently. I buy gasoline like any other motorist, and there are certain dealers that I might see several times a week, merely as a customer.

Q. Do you know all your lessee dealers?

A. Do I know any lessee dealers?

Q. Do you know all lessee dealers?

A. Yes, sir, I know all of them.

Q. Everyone of them?

A. Yes, sir, everyone of them

Q. Do you know all your contract dealers who operate service stations?

A. I do, indeed. Yes, sir.

Q. When you visit the stations do you personally observe what TBA they are handling?

A. That would be part of my observation, yes, sir.

Q. Is whatever TBA they are handling openly displayed at their station and offered for sale as merchandise which is visible to any customer or anybody who comes in?

A. Yes, sir.

Q. Do you know of any instance in which any dealer has ever tried to hide some non-sponsored TBA?

A. No, sir; I don't.

Q. If he wanted to, could he?

A. Well, I think it would be a little difficult to hide it and still have it for sale. I can't think of any instance 3118 or any reason why a dealer would do that.

Q. What TBA do your lessee and contract dealers purchase and handle at their stations?

A. What TBA do they handle?

Q. What brands?

A. Oh, all brands.

Q. Is that true at both contract and lessee stations?

A. That would be true in one and the other, yes, sir.

Q. Is there any distinguishable difference in the TBA purchasing habits and practices of your lessee and contract dealers?

A. Not noticeable that I know of, no, sir.

Q. I suppose most of your stations have a Goodyear decal or a Goodyear sign on them, don't they?

A. Yes, sir.

Q. How about your contract stations, do they have Goodyear decals or metal signs on them?

A. Yes, sir.

Q. Does Atlantic make any effort to force its contract dealers to put Goodyear decals or signs on their stations?

A. No, sir, and I certainly wouldn't want to try in our district. Contract dealers are very independent.

Q. Is the placing of the Goodyear decal and sign on the contract stations the wholly voluntary act of those contract dealers unaffected by anything Atlantic does?

3119 A. I am not sure I understand your question, Mr. Thompson.

Q. Let me repeat it.

When your contract dealers put up Goodyear decals on their stations, or put up Goodyear metal signs, who makes the arrangements?

A. Well, the arrangements would come from Atlantic at the—the decals and signs are offered to the contract dealers and sometimes requested before they are offered. The arrangements then are made between the Atlantic Refining Company and the Goodyear Tire and Rubber Company.

Q. Do you know of any contract dealer who has a service station that has not either asked for or consented to the placing of a Goodyear decal or sign on his station?

A. No, sir, I don't.

Q. Of course, sir, you know all the salesmen who work under your supervision intimately, do you not?

A. Yes, sir.

Q. Reference was made by one or two of the dealers to a salesman named Carlson; does he work under you?

A. Yes, sir.

Mr. Kelaher: Is counsel referring to dealers who were called as witnesses in this case?

Mr. Thompson: Yes, sir. Thank you, Mr. Kelaher.

By Mr. Thompson:

Q. Is Carlson a typical salesman?

3120 A. Yes, sir.

Q. Does he handle typical dealers in your area?

A. Yes, sir.

Q. Now, Mr. Gaestel, I am going to ask you some questions about what you and your staff of sales people do to promote Goodyear TBA.

First, in your district you receive a commission from Goodyear on certain Goodyear TBA sales, do you not?

A. Yes, sir.

Q. Is it part of the duties of your salesmen to try to sell the dealers on the advantages of the Goodyear line?

A. Yes, sir.

Q. Do you and do they have a sales talk about the Goodyear TBA line?

A. Well, naturally, we have a talk, yes, sir.

Q. What do you tell your dealers about Goodyear? Do you try to describe the advantages to them of handling the Goodyear line?

A. I do; indeed, yes, sir.

Q. What do you tell them?

A. Well, this could go on for hours, Mr. Thompson, but I will try to be very brief.

Q. Summarize it; be very brief.

A. I try to point out the advantages, the quality product.

Q. Advantages to whom?

A. To the dealer. Things that will make the Good-3121 year line—his line much easier for him to sell. The quality product which very definitely Goodyear has. They have consumer acceptance and, of course, in that public demand ties in as well.

Goodyear's line is completely competitive at all grades, both in quality and in price.

Q. May I interrupt you to ask what you mean by "at all grades"? Does Goodyear have more than one grade of tires?

A. Oh, yes, sir; Goodyear has several levels. I mean, in the tire business a tire is at a certain level. An 80 level, a hundred level, and I am not an expert, but the level of the tire sets the price of the tire.

Q. I interrupted you; go ahead, sir.

A. Well, back to the advantages of buying. Also, in the Goodyear line, as I say, we are sure that our dealers can buy at competitive prices and certainly receive quality products. They can take part in the Goodyear cooperative advertising which Atlantic gets into as well. The handling of any possible claims on material is much easier in most cases. There are possibly others, but right now that is all I can think of.

Q. You referred to price of Goodyear TBA price. Is it part of your function and part of your salesman's function to ascertain whether the Goodyear price in particular areas and at particular stations are fair and competitive?

A. Yes, sir.

Q. Do you from time to time receive complaints, 3122 from your dealers with respect to prices charged by the Goodyear authorized supply point?

A. From time to time, yes, sir.

Q. Do you investigate such complaints?

A. Every complaint.

Q. What do you find?

A. Well, I would say in the probably 99 percent of the cases that it is a misunderstanding on the part of the dealer who has complained. Again, I have to go back into my levels. When I talk about different levels, you must understand that our stations are being constantly called upon by competitive salesmen and if I would take a, say a first line tire, and if I may pull a figure out of the air that our supplier is selling for \$20.00, well, competitive salesmen come in and say, "What are you paying for a 715 by 15 tire?" and the dealer would say \$20.00. And the competitive salesman being smart and trying to sell tires, say, "Well, I sell a 710 for \$18.00." The average dealer at that point sees red. He is on the telephone either to myself or to the salesman involved saying, "I am being taken by my Goodyear suppliers." Well, investigation will generally show that the quotation he received of \$18.00 was probably on a second-brand or different level, and a different level tire. We have to go through this and sit down with the supplier, check out on the offer made by a

competitive salesman, and we can present the facts to 3123 the dealer, and, as I say, 99 percent of the cases,

satisfaction comes out. The same thing holds true with batteries, different amp hours. On that, again, I am not a specialist, but I know enough about it too—naturally, I have had these complaints over the years and I automatically figure this is the way I am going to have to handle this and look for these things first. When I was first sales supervisor, I might get upset about these little problems, but most complaints end up in that direction.

Q. I suppose it is true that not only the authorized Goodyear supply point, but jobbers from time to time offer special deals to the dealers?

A. Yes, sir.

Q. And those deals would involve quantity discounts and that sort of thing?

A. That is true; yes, sir.

Q. Do your salesmen take orders from the dealers for Goodyear TBA?

A. That is part of the responsibility, yes, sir, to take orders for TBA and to place them with the supplying dealer.

Q. Do they from time to time phone in to the Goodyear supply point orders for deliveries to dealers?

A. Well, I would say that they phone in the majority of their orders to the Goodyear supply point, yes, sir.

Q. Now, how do you as a practical matter know that that is so?

3124 A. Well, part of my responsibility is the curtailing of expenses wherever possible, and part of that, of course, is surveying my sales peoples' expense accounts, and I have a reasonable idea of what telephone expense should be and different expenses and pretty frequently I ask for explanations of certain items and, of course, telephone items would be on that, and the salesman will come back to me and tell me he has called the supply dealer on a rush order—maybe it was a long list—and it took eight, ten, or fifteen minutes for the party on the other end to write the order down; so, there are ways, very definitely we have.

Q. Do the salesmen for Atlantic look over the TBA stock of the dealers when they visit his stations?

A. Yes, sir, that is part of the responsibility.

Q. Do salesmen for wholesalers selling TBA other than Goodyear do precisely the same thing?

A. Yes, sir.

Mr. Kelaher: What is this they do?

(The reporter read the record as requested.)

By Mr. Thompson:

Q. In other words, can any representative of any wholesaler visiting a service station check the service station operator's TBA stock?

A. Yes, sir, with dealer approval, unless the dealer should object to it.

3125 Q. Do your salesmen from time to time double team with Goodyear salesmen?

A. Yes, sir.

Q. What do you mean by double team?

A. Well, that is my salesman and a salesman from the Goodyear Tire and Rubber Company will spend possible a day, two or three days at different intervals, calling on Atlantic service stations, possibly on tires, batteries and other products.

Q. Is it part of the normal routine of your salesmen to pick up orders for Atlantic dealers at supply points by car? I mean, do they do that in your district?

A. Yes, sir.

Q. As a convenience, help and service to the dealer?

A. That is right.

Q. By the way, Mr. Gaestel, do the Atlantic dealers register whatever complaints they may have about their station or other subjects with you? Do they talk to you about their gripes and their grievances?

A. Well, generally they will discuss them with the salesman and wherever possible we like them settled at that level. If it can't be handled that way, why, then I am the next level.

Q. Has any Atlantic dealer ever complained to you that some salesmen try to push or force him or compell him to buy some TBA he didn't want to buy?

3126 A. Yes, sir.

Q. What was the occasion?

A. Well, that was several years ago one of our dealers

called to complain that the salesman was trying to force him to buy TBA.

Q. What did you do?

A. Well, the salesman and I went out and called on the account to find out the full details of the story. Would you like me to—

Mr. Kelaher (interposing): Your Honor, I wonder if we could have the dealer identified as we were doing in our part.

By Mr. Thompson:

Q. Do you remember who the dealer was?

A. Well, the dealer's name was Joseph Malazia.

Q. Who was the salesman?

A. The salesman was Joseph Fitzpatrick.

Q. What did you do? What happened?

A. Well, I would have to give you a little background if you don't mind.

Q. Go ahead.

A. Actually, the dealer was backed, had a financial sponsor in this business, a businessman from a factory right directly across the street from the station. I believe he was a personnel man and he wanted a good place for different employees to be able to leave their cars and 3127 have them serviced while working and he had backed this dealer. Then, after the complaint came in, of course, Mr. Fitzpatrick and myself went out to discuss the situation with Mr. Malazia and I tried to reason with Mr. Malazia, and it was a rather difficult assignment to talk to him; so, I, knowing of this connection, this financing, I asked Mr. Malazia if he would mind if we had his backer in on the discussion to ascertain whether we were using undue pressure or trying to force him to buy TBA; so, we made a date with the gentleman and sat down and we put our picture before him, and, of course, Mr. Malazia, the dealer put his. The result was Mr. Malazia agreed that he

would abide and we agreed that we would abide by whatever his backer said. And, of course, at the end of our interview, the backer told the dealer, Mr. Malazia, that he was entirely all wet on the situation, it was a normal sales effort on the part of the salesman, and requested him to be a little more sensible, and where he had cases, he could purchase from us because of price and one thing or another that he would recommend that he would do so.

Q. Now, in your long history in the sales department of Atlantic, is that the only complaint that ever came to your attention?

A. Yes, sir.

Q. Or about which you have any knowledge?

3128 A. Yes, sir.

Q. Where a dealer said that some Atlantic salesman was trying to put too much pressure on him to buy TBA!

A. Yes, sir.

Q. If Fitzpatrick did try to put pressure on this account, was his conduct wholly unauthorized?

A. If he had tried to put pressure, undue pressure?

Q. Yes, that is right.

A. That would be unauthorized, yes, sir.

Q. Did Fitzpatrick know what your policy was?

A. Fitzpatrick was fully conversant with the policy and in my opinion operated within our policy.

Q. In other words, in your opinion, having personally investigated the facts, you reached the conclusion that he had not tried to force the dealer to buy anything he didn't want to buy?

A. He absolutely did not try to force; it was a normal sales effort a salesman makes.

Q. Now, getting back to what you do for Goodyear, is it part of your function and of your salesmen's function to give advice to dealers on what items of TBA are salable?

A. Yes, sir.

Q. Is that just part of your normal functioning?

A. Well, of course, we have to have a good product knowledge; we are advised by experts from within our company and from within Goodyear as well. I hope 3129 I am on the right track in your question.

Q. You are answering my question.

A. Inventories for number one. I mean, there are fan belts and the amount of them, of course, is astronomical, but certain fan belts will sell faster and easier than others because of the number of automobiles that that size of fan belt takes. But we advise our dealers it is a stocking problem, so they do not have too much of one and not enough of another. That would hold true right through the line. We have a good idea of what is a fast moving item, and what is a slow moving item, and that is part of our service.

Q. Do a large number of your dealers need that kind of advice and assistance?

A. I think most dealers can use that type of assistance, yes, sir.

Q. Do you give them sales' hints and instruct them on sales' techniques with respect to Goodyear TBA?

A. Yes, sir.

Q. Do you help them on Goodyear sales promotions from time to time?

A. Yes, sir. We help them plan promotions. We help them dress their stations up for promotions. We have them write any ads they might want to write for any sales or promotions or special events as we commonly call them.

Actually, my service salesmen at times will work 3130 right in the station, help them go out and solicit customers for these promotions whether it be a tire promotion or polish promotion or whatever it is. We play a very definite part in our dealers' promotions, yes, sir.

Q. Is it part of your routine to keep abreast of new Goodyear products and explain such products to your dealers?

A. Yes, sir. Myself, my salesmen, my service salesmen are all kept abreast of new products and new ways and means of either using or selling or handling these products. That information is funneled on to our dealer force.

Q. Is tubeless tire an example?

A. Tubeless tires is a very definite example. We held dealer meetings where we actually mounted and dismounted tires for the dealers. We let them try it. We trained them. We have held clinics to teach them the easiest and fastest ways.

Q. What would be another illustration of something new that had to be explained to your dealers—the dry charged battery was one of them?

A. The dry charged battery would be the same thing. You would have to know how to handle, store, how to prepare them, the installation of the electrolight that will bring the battery to life, how long it would have to be on a charger before being put in use, the possible mistakes they could make in the installation of a dry charged battery.

3131 • Q. Do you care in your district office or pay any attention to what brand of TBA is sold by your lessee or contract dealers on Atlantic credit cards?

A. No, sir; it is of no consequence to me.

Q. From your long experience in marketing, is a sign, on a service station indicating that the dealer sells a particular brand of battery a significant factor in procuring sales of batteries?

A. I would say no, sir.

Q. Why?

A. The batteries, unlike tires, are sold in two ways. Number one, either the motorist steps into his garage

some morning and finds his battery has gone dead, at which point he will call the nearest service station to come out and get him started, which often means replacing the battery.

Number two, a battery that is due to fail is picked up by the service station attendant or manager who checks the battery out with the hydrometer and advises the customer that the battery is due to go and he is, therefore, able to sell a battery. The average customer does not ride along thinking he will buy himself a new battery and look for signs. That has been my experience. The answer would be no.

Mr. Thompson: Thank you, sir. Mr. Kelaher, you may start cross-examination if you are prepared, or anytime you are ready.

3132 Mr. Kelaher: Well, Mr. Examiner, I was advised that this witness would appear, but I didn't know the scope of his examination, which has been extremely lengthy, but I do think that if I could have until 2:00 o'clock that I can cross-examine him at that time.

Mr. Thompson: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

We will adjourn until 2:00 o'clock.

(Whereupon, at 12:20 p.m., the hearing was recessed to reconvene at 2:00 p.m., the same day.)

3133      Afternoon Session (2:00 p.m.).

Hearing Examiner Kolb: The hearing will come to order.

WILBUR D. GAESTEL resumed the stand as a witness and, having been previously properly and duly sworn, was further examined and testified as follows:

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Gaestel, you were present at the hearings earlier this week, were you not, when witnesses from your district testified?

A. Yes, sir.

Q. And for the record, would you—we have heard references to Jersey district and the Newark district and North Jersey district; is that synonymous?

A. It is synonymous.

Q. When did you first learn that the Federal Trade Commission was investigating the TBA sales commission plan between Atlantic Refining Company and Goodyear?

A. Well, are you talking about a recent, or of any further information?

Q. No, how—well, it goes back quite a number of years, doesn't it?

A. Yes, I have had an inkling, possibly a few years ago, the Federal Trade people were in the district questioning dealers.

Q. Were you aware that as far back at 1952 the Federal Trade Commission investigators had called on Atlantic Refining Company concerning legality of this plan?

A. I can't recall I was, no, sir.

Q. Nor were you aware that a complaint was issued in January 1956 concerning the legality of the plan?

A. The actual date, no, I cannot.

Q. You are aware that a complaint is out I am sure?

A. I am now, sure.

Q. In giving us your background, most of these functions are pretty clear to us, but one you gave as office supervisor from October '51 to October '54, what were your duties in that capacity?

A. Well, in charge of the personnel working in the office who handle the normal clerical work for the district.

Q. That would have nothing to do with supervision of sales personnel at that time?

A. Not actual supervision as supervision is understood, but I have worked hand in hand with the salesmen pretty constantly. An office supervisor in our district does work with the salesman practically everyday of the week in one form or another; advises on credit, collections, policies, rental, and office supervisor also worked somewhat in the form of an administrative assistant to the district manager. So, you become pretty thoroughly involved with the sales policies and programs.

Q. The entire operation?

A. Yes, sir.

Q. With respect to one statement you made in response to a question you referred to the fact that there were 12 or 13 major oil companies in your marketing area?

A. Yes, sir.

Q. Do you recall that?

A. Yes, sir.

Q. Atlantic is one of the majors, is it not?

A. We consider ourselves a major, yes, sir.

Q. Another question, just for purposes of clarification, at one time a section of Western New Jersey was part of the Eastern Pennsylvania region, as I understand your testimony?

A. That is right.

Q. And was that a particular county, was that Warren county, for example?

A. That would be Warren county, yes.

Q. And that was the only county involved, was it, or did it cover a wider range?

A. I am not very good at defining county lines. If you would like to bring the map out, I might be able to tell you better.

3136 Q. I would like to get that a little clearer in my mind, sir. I show you RX-A-15 and ask you to state that (showing map to the witness).

A. Yes, it would be Warren and Huntingdon counties.

Mr. Thompson: All of Warren or only part of it, Mr. Gaestel?

The Witness: I would say all of Warren.

Mr. Kelaher: Approximately.

The Witness: At the time of the change my scope was limited and I had no relations with anything out in that area, and I can't tell exactly where the defines were.

Mr. Thompson: Mr. Kelaher, if you would like, I will put another map on the record showing what the precise division was at some later date, or I will be glad to stipulate with you when we ascertain the facts.

Mr. Kelaher: I think this would probably be sufficient, but if there is any marked change in that, maybe we could have a little more precise one.

Mr. Thompson: Right.

By Mr. Kelaher:

Q. One of your principal functions is to keep dealers in Atlantic stations, isn't that correct?

A. Yes, sir.

Q. And isn't that necessary because of the large investment that Atlantic has in lessee stations?

3137 A. Yes, sir, unless the stations are open of course we can't sell gasoline.

Q. You don't get a return in your investment unless you have a lessee dealer operating it, right?

A. That is correct.

Q. And your investment in your lessee stations in your district would run to a figure that would be—the current replacement value would run fairly high, I would think, on your lessee stations?

A. I would like to have you define "high"—everything is relative.

Q. Yes. It would depend, of course, on your average cost of operating or building a station, and we do have one figure in the record that it would average around \$50,000 to buy the land and build the station, and that probably has gone up over the past year.

A. I frankly am not sure of the figure, honestly, and rather than commit myself, I think the figure might be—

Q. (Interposing.) Based on a \$50,000 figure you would have almost a \$7,000,000 investment in your lessee stations alone is the point I am making. The current replacement value would be somewhere around \$7,000,000, isn't that true, if your average investment is \$50,000?

A. Well, if your mathematics are correct, and the average investment is \$50,000, I guess that would be so.

3138 - Q. All right.

Getting back to the fact that you are interested in getting a return on Atlantic's investment in a station, isn't it also a fact that the sale of Goodyear TBA or rather the purchase of Goodyear TBA by lessee dealers increases Atlantic's return on its investment?

A. To some small extent, yes.

Q. You have also stated that a good dealer nets from \$9,000 or \$10,000 a year and in some instances, he nets more. You will recall that testimony, I believe.

A. Yes, sir.

Q. Now, isn't part of the net return to the dealer in your figure based on his income from the sale of TBA?

A. Yes, it would be.

Q. That is an important part of service station operation, I believe you testified.

A. Extremely important, yes, sir.

Q. In addition to the successful dealers, there are some, I imagine, who go broke, so to speak, in their operation, aren't there?

A. It happens, yes, sir.

Q. And the figure of \$9,000 or \$10,000, is that an average? Are there some dealers who make less than that?

A. Yes, there are dealers who make less than \$10,000.

Q. How much less, or what would be the minimum figure?

3139 A. Well, I am afraid that would be a little difficult for me to answer, almost as much for me to pick someone out working on the street and telling you what they earn. I don't have access to—

Q. (Interposing.) It would be something less than \$9,000 apparently?

A. Yes, there are some who do earn less than \$9,000, of that I am reasonably sure.

Q. You also made the statement on direct examination, which I would like to call to your attention and then ask a few questions. I believe you stated that dealers—put it this way, that people do not buy from companies, they buy from dealers. Do you remember that statement or words to that effect?

A. Yes.

Q. Were you implying by that that a dealer is able to build up goodwill, personal goodwill in his station?

A. Yes.

Q. And I would like to ask you this question then; when such a dealer leaves the station and moves to a distant

location or goes out of the business, doesn't that goodwill inure to Atlantic's benefit?

A. No, sir. Using my word and then yours, personal goodwill—and that is what it amounts to, and I have to qualify that. There are possibilities it can, but in 3140 actual experience, actual practice, in every change-over of a service station, regardless of how far the dealer moves or goes out of business, there is business loss.

Q. It is certainly true that a good dealer can build up a trade, some of which will continue to come to that station after he leaves, isn't that so?

A. Yes, sir; that is so. If you have a good product.

Q. And that would be the result of his operation there?

A. And the product, yes, sir.

Q. Now, on your direct examination you made reference to the fact that since October '54 there was only one forced cancellation to your knowledge in your district. I don't think you told us who that was. Could we have the name of that dealer?

A. Frankly, I can't recall, the station is very vivid in my mind.

Q. Can you give us the station location?

A. Yes, the station was at North Bergen, 1502 Tonnelle Avenue.

Q. And was the 15-day warning letter in effect at that time?

A. The 11-point letter of service was in effect.

Q. Did you send him a 15-day warning letter?

A. Yes, we did.

Q. And I wonder if you could produce a copy of that for us or have it produced or sent to us?

A. I believe it is possible, yes, sir.

3141 Q. Was his lease cancelled at the termination of the 15 days?

A. It was. I cannot say definitely it was cancelled right at the 15 days. But it was within the period of time, and it was cancelled, yes.

Mr. Kelaher: I would like to have this witness or counsel—we asked for all warning letters which I think covered that period, and I don't think we have that one in our record—we would like to have that and all correlating to it.

Mr. Thompson: We will ask Mr. Gaestel to look up the facts in the district office, and we will place them on the record at some later date.

Mr. Kelaher: Thank you.

Mr. Thompson: I think, Mr. Kelaher, that Mr. Gaestel testified this morning—he will correct me if I am wrong—that there was a mutual cancellation executed in that case, am I correct?

The Witness: Yes.

Mr. Kelaher: I think he did say that, yes.

The Witness: Yes.

Mr. Thompson: But we will supply you with the facts, whatever they are, sir.

Mr. Kelaher: Thank you.

By Mr. Kelaher:

Q. Now, you also mentioned in passing this morning that apparently your company raids other service stations for new Atlantic dealers, among other sources of supply.

A. Yes, sir. It is normal procedure.

Q. Do you consider that an ethical practice to raid the dealers of another oil company?

A. Well, it is survival, and I have never even considered the ethics of it. It has been a practice before I was in the business, and it will probably go on long after I am out of it by all companies.

Q. I would like for you to direct your attention to this

process of screening new dealers which was gone into at some length this morning. Would it be correct to say that that is a very selective process?

A. Yes, sir.

Q. As I understand it, first the salesman makes the initial screening, then, after that the sales supervisor, which would be you, would discuss the matter with the applicant, and then after that the district manager would be called in if the applicant reaches that point; is that a correct statement of the procedure?

A. Yes, sir; that is right.

Q. During the course of your talk with the applicant, you have stated that you discuss the fact with him that your district sponsors Goodyear TBA. That is correct, isn't it?

A. Yes, sir.

3143 Q. And does he ever express his viewpoint at that stage of the game as to whether or not he will carry the sponsored brand or not?

A. Yes, you are asking for every case or—

Q. (Interposing.) The general situation, you might say.

A. I have experienced cases where the man sitting across from my desk has told me that possibly he has been with another company, another oil company, and has a marked preference for some tire, at which point he will ask further, even going beyond my discussion, what will happen if he handles such a tire, and it does not conflict or have any bearing on our ultimate decision whether this man is the right man to run our service station or not. But there have been times, yes, sir.

Q. I don't know whether you have completely answered my question.

A. I will be glad to put in what I have left out, if you will let me know.

Q. Sure. My question is whether or not an applicant

ever states that he will purchase the Goodyear TBA at that stage when you are screening him through?

A. Well, that would hold true just as well as the answer I stated of the one who said he wouldn't. Yes, some applicants do say that they know the Goodyear line, they know how well-known the brand is, and would be glad to consider it. Again, many of them have handled 3144 Goodyear lines in other service stations and intend to continue doing so.

Q. Is it at that stage, or is it later when you designate the Goodyear supply point for your dealers?

A. It isn't for the dealer, it is actually for the location itself that the supply point is set up; so, on a prospect coming in that supply point for that particular service station we might be discussing has been designated long past. That is nothing that we decide on on considering the applicant himself, that is, the service station and his location.

Q. As I understand your answer, you have authorized a Goodyear supply point for each territorial area; is that correct?

A. Not necessarily each territorial area, but a given area. It could cross over. When you say territorial area, I think of salesmen's territory.

Q. No, I am thinking of geographical area.

A. Yes, that would be it.

Q. I am just trying to get your answer clear. Do you have a different supply point for each geographical area in your district?

A. That would be right, yes, sir.

Q. When a dealer gets a station location in a specific geographical area, the name of the Goodyear supplying dealer is given to him; is that correct?

A. That is right, yes, sir.

3145 Q. And if a new dealer indicates a preference for Goodyear TBA, are arrangements made with the

Goodyear supplying dealer to put the initial stock of Goodyear TBA into that new dealer's station?

A. Well, of course, that does not happen in every case, it happens in some cases—

Q. (Interposing.) I am asking you—well, you go ahead and answer in your own way.

A. It can happen and it cannot. Frequently, the salesman will bring the Goodyear supplier around and introduce him to the dealer after the dealer is installed. Possibly the salesman will contact the supplier and say, "I am having a change-over on such and such a date."

Q. By salesman, you mean Atlantic salesman?

A. I am talking about the Atlantic salesman, sure.

Q. So it can happen either way?

A. That is right. He can either bring him around in person or have him come around latter.

Q. Now, when you are discussing Goodyear TBA with applicants and later at the training school, I might add, do you point up the fact that you have uniform Goodyear TBA identification on most Atlantic service stations in your district? Is that given as a selling point?

A. I don't think so. I can't recall making any point of that with any applicants and I cannot recollect that that is so in the training program.

3146 Q. Do you make it known to them that most Atlantic dealers do purchase Goodyear TBA in accordance with the Atlantic recommendation?

A. I would let them know a large number of Atlantic dealers in our area handle the Goodyear line, yes.

Q. In your district?

A. That is right, in my district.

Q. You were asked some questions on direct examination about hours of operation. You were asked these questions at two different stages of your direct, but, as I recall your answer, you stated that these hours of operation are set by

competition and by customer demands, to summarize it. Is that accurate?

A. Yes, sir.

Q. You also stated that you request Atlantic dealers to operate certain hours; is that right?

A. I said I request them to be competitive with their competition.

Q. Isn't it a fact that under your 11-point lease letter that you make it clear that an Atlantic lessee dealer must meet Atlantic standards with respect to hours of operation, or it may be grounds for lease cancellation? I am referring to CX-88-B.

Mr. Thompson: I am objecting to the form of the question because he is asking the witness to construe a 3147 written document which is in evidence.

Hearing Examiner Kolb: This is cross-examination, and the witness has testified as to terms and so forth. The objection will be overruled.

Mr. Thompson: May I suggest, then, that Mr. Kelaher show the witness the exhibit? I am perfectly sure he never heard of that exhibit number.

Hearing Examiner Kolb: Yes.

Mr. Kelaher: I was about to do that. Also, I think he referred to the 11-point lease letter in his direct examination.

By Mr. Kelaher:

Q. Mr. Witness, I show you CX-88-B (handing document to the witness) and ask you if that is not the 11-point lease letter you were referring to in your direct testimony?

A. Yes, sir.

Q. I call your attention to item six, which reads: "Hours of Operation: Uniform daily operating schedule based on buying habits of potential trade in the area."

My question is this, and I will rephrase it in the light

of the objection: Isn't it a fact that Atlantic sets the standards for hours of operation and not the lessee dealer?

A. No, sir.

Q. I beg your pardon?

A. No, sir.

3148 Q. No, sir, you say. Are you familiar with a lessee dealer by the name of Policastro, I believe?

A. Yes, sir.

Q. I would like to show you Commission's Exhibit 258, which is a letter from Mr. Leslie Geer, whom you have identified as the Newark district manager, and which has a carbon copy going to you, and ask you to read 258-A (handing document to the witness).

Mr. Thompson: May counsel see it, too?

Mr. Kelaher: Certainly.

By Mr. Kelaher:

Q. I would like you to read—the particular point I am interested in is number two. I would like to have you read that into the record and also the last paragraph. You can read the whole letter in the record, if you want to, but it is already in there. Just read the—

A. (Interposing.) "From our observations we note irregular hours of operation of your station to the point that we believe your marketing area is not being properly served."

Q. Then, the last paragraph.

A. "You are further reminded that in accordance with the terms of your lease, you have 15 days from the day you receive this notice to remedy these defaults; otherwise, your lease will have been breached."

Q. Now, I call your attention to Commission's  
3149 Exhibit 258-B, which is a letter from Leslie Geer to  
Mr. Policastro with a carbon copy to you and three  
other gentlemen.

- A. Would you like me to read this?  
Q. I would like you to read the entire letter.  
A. Mr. Thomas J. Policastro, Hudson Boulevard and 88th Street, North Bergen, New Jersey. Mr. Policastro:

"It was extremely gratifying to both Mr. Gaestel and myself to find your spirit of cooperation manifested in your having done such an outstanding job in cleaning your station and to hear you say you were not yet satisfied and were going to continue to improve it.

"We are also pleased to receive your promise to operate your station under normal station hours.

"I am sure that with this cooperation and our working together that your gallons will rapidly increase and you can be sure that we will do all within our policies to help you achieve this goal."

- Q. Thank you. Isn't it a fact that you have the power under your lease to terminate a lease agreement if the station dealer does not measure up to your standards as to what his hours of operation should be?

Mr. Thompson: Objected to as calling for a legal conclusion.

Hearing Examiner Kolb: Objection overruled.

The Witness: Would you repeat the question.

3150 Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

The Witness: I have to honestly say in—

By Mr. Kelaher:

Q. (Interposing.) Let's answer the question Yes or No, and then you can amplify.

A. I have to answer No.

Q. You answer No in the light of this evidence in the record!

A. Yes, sir.

Q. All right. I will go on to something else.

Mr. Thompson: You can explain your answer, if you want to.

The Witness: I would like to explain the answer.

By Mr. Kelaher:

Q. You go right ahead.

A. I do not believe that we could make that part of our lease enforceable under actuality.

Q. Well, that is very interesting. Why do you threaten a dealer with lease cancellation for not maintaining hours of operation, then?

A. Psychological persuader, possibly.

Q. Do you also use other measures of that type in threatening dealers with lease cancellation?

A. I know of no others, no, sir. That is purely my opinion on that.

3151 Q. That seems to be a common practice, does it not, on the part of Atlantic Refining Company with respect to hours of operation to advise dealers that they are to maintain certain hours of operation?

A. No, sir, not in the Newark district. That is the only district I can speak for.

Q. Well, all of your lessee dealers get the 11-point lease letter, do they not?

A. Yes, sir.

Q. All right. You also stated on direct examination that there are a large number of competitors of Goodyear in your Newark district?

A. Yes, sir.

Q. And does that include suppliers of all types of competitive brands of tires, batteries, and accessories?

A. Yes, sir.

Q. And does that include sellers of Lee tires and Exide batteries?

A. Yes, sir.

Q. And Thermoid products and Fram products?

A. Yes, sir.

Q. Now, going on to another subject, you were asked some questions about original stocking orders in connection with lessee dealers, the question pertained to whether or not Goodyear always gets the TBA original stocking 3152 order in a new Atlantic station; do you recall that testimony this morning?

A. Yes, sir.

Q. And you said they don't always get the original stocking order. Is it a fact that they do get the stocking order at times?

A. Yes, sir.

Q. Is it a fact that in most instances that Goodyear gets the original stocking order?

Mr. Thompson: Are we talking, Mr. Kelaher, about a new station or a replacement?

Mr. Kelaher: I think we would include not only new stations but new dealers replacing old dealers in the same station. Is that what the answer went to this morning?

The Witness: I can define it possibly for you. On new stations, Goodyear would have a reasonably good chance of getting the initial stocking order.

By Mr. Kelaher:

Q. On new stations?

A. On a brand new station, yes, sir.

Q. Why would that be?

A. Well, because of the pattern of our business. We would advise Goodyear that we were opening a brand new station, naturally, and arrange to have the dealer meet the Goodyear supplier and make a selection of the stock to open the station with. That would be done before the station would be opened.

3153 Q. You would give the Goodyear supplier advance notice of the new station opening; is that correct, sir?

A. We would arrange prior to opening of a new station, if the dealer was at all agreeable, to get together with the Goodyear supplier, and we would set up an initial stock order so when we opened the station it was ready to do business.

Q. And when you opened the station would you also have the Goodyear window valances and outdoor advertising installed, or would that take a little time?

A. It could take time, depending on where the crew was.

Q. Eventually that identification would be in the station?

A. We would request Goodyear put the identification in the station.

Q. Atlantic would request Goodyear to put that identification in the station, you say?

A. That would be the only way it would be put in.

Q. Do you give any competitors of Goodyear advance notice of new station openings?

A. No, sir; I sell Goodyear.

Q. You just stated you sell Goodyear which leads us to another subject. On direct examination this morning you were asked to state some of the advantages to Atlantic dealers for handling Goodyear TBA. Do you recall that testimony?

A. Yes, sir.

Q. And you went down the line and listed a number of reasons. One was quality of product and so on.

Do you think it is in the Atlantic dealer's interest to handle Goodyear TBA for all the reasons you listed in preference to other brands of TBA?

A. Would you be specific on other brands? I mean, there are certain brands, yes, very definitely Goodyear would be far more advantageous than certain brands, yes.

Q. For example, you stated that you recommended the

Goodyear line because (1) of the quality of the product. Well, it is true, is it not, that there are many brands of tires and batteries and accessories which are of like grade and quality to Goodyear's isn't that true?

A. I would assume it is, but I sell Goodyear, and I know it is a quality product. I don't have to make any assumption on Goodyear.

Q. Is it also true that there are other brands of TBA which have consumer acceptance in your marketing district?

A. I am sure there are, yes.

Q. And isn't it true that there are other brands, other suppliers of TBA, in your marketing district who have stocks of TBA sufficient to supply the needs of Atlantic dealers and other customers?

A. I would assume so, yes, sir.

Q. And isn't it true that there are other suppliers of TBA who are able to sell brands at competitive prices with Goodyear TBA?

3155 A. I would assume so, yes.

Q. Do you think the reasons you stated this morning as to why it was advantageous to Atlantic and to the dealer to handle Goodyear TBA are the real reasons why Atlantic is sponsoring Goodyear TBA in the Newark district?

A. Yes, sir.

Q. And you were in the Newark district prior to June 1950, as I understand your testimony?

A. I was.

Q. You were promotable dealer salesman from January 1947 to October '51; so, did you know from your experience in the Newark district that Atlantic originally intended to sponsor another brand of TBA in the Newark district?

A. No, sir; I didn't.

Q. Do you know—and the record herein shows—that

in January 1950 Atlantic decided to test Firestone TBA in the Newark district?

A. I didn't.

Q. Did you know that on March 17, 1950, Firestone advised Atlantic that it could not go into the Newark district?

A. No, sir; I didn't.

Q. And were you aware that it was not until May 1950 that Atlantic decided to sponsor Goodyear TBA in the Newark district?

A. I wouldn't remember the exact date we did decide to handle Goodyear.

3156 Q. So, it would seem quite apparent, would it not, that the reason for sponsoring Goodyear TBA is due to the fact that Goodyear was willing to pay Atlantic an override commission for sponsoring Goodyear products in the Newark district?

Mr. Thompson: Objected to.

By Mr. Kelaher:

Q. And not the reasons you stated?

Hearing Examiner Kolb: Objection will be overruled.

Mr. Thompson: The question is obviously argumentative. The witness has said he never heard of the Firestone proposal. I understand I am overruled. I am just putting my reason on the record.

Hearing Examiner Kolb: I appreciate the reason before I rule, not after.

By Mr. Kelaher:

Q. You can answer the question.

A. Would you read it?

(The reporter read the pending question.)

Mr. Thompson: May I respectfully comment, sir, that I have rarely heard Mr. Kelaher put a question which is subject to more possible objections than that one.

3157 By Mr. Kelaher:

Q. Isn't it a fact that if Atlantic were to sponsor any particular brand of TBA that you would think it was to the dealer's advantage to handle that brand?

A. I am sure that Atlantic would sponsor a quality product only.

Q. Is your answer Yes or No?

A. My answer would be Yes based on my opinion.

3158 Q. Thank you. In connection with certain questions this morning concerning complaints you received from Atlantic dealers with respect to Goodyear TBA, you stated—and you can correct me if I am wrong on this—that most of the complaints you received from dealers relate to prices; is that correct?

A. Yes, sir.

Q. And as one example you referred to the fact that an Atlantic dealer might be buying a Goodyear tire, 710 by 15 at \$20.00 and a competitive salesman might come and offer the same sized tire for \$18.00. You stated as a matter of good salesmanship, you implied that as a matter of good salesmanship, he might indicate that it was the same level tire as the Goodyear tire. Did you intend that implication in the record?

A. I don't know that he would intend to say it was the same tire, but I have seen it happen frequently where there is no differentiation made that it is a tire and it is the same sized tire.

Q. It wasn't your intention to imply, I assume, that every competitor of Goodyear misrepresents the level of its tires?

A. Absolutely not.

Q. Or batteries?

A. I was trying to illustrate a point, the problem.

Q. In answer to one other question—you were asked what brands of TBA your lessee and contract dealers

handle at your stations, Atlantic stations—and the answer you said, all brands; do you recall that answer?

3159 A. Yes, sir.

Q. You did not mean to imply that Goodyear was not the principal TBA carrier by your lessee and contract dealers, did you?

A. No, I did not mean to imply Goodyear was not the principal, but every station has competitive brands of merchandise.

Q. However, some of the competitive brands are more on a fill-in basis, aren't they, or at particular customer request, or in response to a particular customer request?

A. It works both ways. Sometimes a Goodyear supplier sells as a fill-in on something that a competitor might be normally selling the dealer.

Mr. Kelaher: May I see a copy of that booklet that you had?

(The document was handed to counsel.)

By Mr. Kelaher:

Q. I might ask at this time, too, do you have any indication of the total amount of Goodyear TBA sold in the Newark district annually?

A. Yes, sir, do I know the figures?

Q. Approximately.

A. Yes, sir.

Q. What would that be?

A. 1957, approximately \$380,000.

3160 Mr. Kelaher: May we have a short recess, your Honor?

Hearing Examiner Kolb: Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

By Mr. Kelaher:

Q. I just have a few more questions.

First, in connection with your statement that Atlantic salesmen take orders, you mentioned that they do—what was your testimony on that? Do Atlantic salesmen take Goodyear TBA orders from Atlantic dealers frequently or infrequently?

A. I would say frequently, yes, sir.

Q. Isn't it true that Atlantic lessees dealers also telephone orders in to their supply point?

A. Yes, sir, it works both ways.

Q. That is a normal procedure for them, is it not?

A. That happens with Atlantic products as well as—

Q. (Interposing.) Or with Atlantic product?

A. That is right.

Q. And that is done on a large scale, I would think, taking into consideration your entire district?

A. A reasonable scale. It works both ways. The salesman calls once a week, and the dealer always thinks of something two hours later, and rather than wait until he sees the salesman again, he will call either Atlantic or possibly the local Goodyear supplier.

3161 Q. Does the Goodyear salesman also take orders?

A. The supplier?

Q. The Goodyear supplier dealer?

A. Will take orders, yes, sir. He also calls.

Q. With respect to your testimony concerning Joseph Malizia, I would like to ask you a few questions.

A. Yes, sir.

Q. What was Mr. Malizia's complaint or his gripe, so to speak?

A. In very few words, Mr. Malizia did not believe the Atlantic salesman had a right to try to sell him anything more than gasoline and motor oil.

Q. What TBA products was Mr. Malizia carrying at the time of the complaint?

A. What TBA—

Q. (Interposing.) What brand of TBA products?

A. He was carrying all sorts of brands. He was carrying Goodyear tires. Mr. Malizia bought, it seems to me, from anyone who came along when he happened to have a need. I can't recall that he had one specific supplier. It seemed to me he bought from a multitude of suppliers.

Q. And was it his specific complaint that the Atlantic salesman was attempting to pressure him into buying Goodyear TBA?

A. He seemed to be against the idea that the Atlantic salesman should sell him—

3162 Q. (Interposing.) Was this his specific complaint? That is what I am asking you.

Mr. Thompson: Mr. Gaestel is answering your question. You didn't let him finish the answer.

The Witness: Well, the complaint, it was given in the form of a complaint, said that the Atlantic salesman was trying to force him to buy TBA, but in speaking to Mr. Malizia the only conclusion I could come to was that the Atlantic salesman was trying to sell him TBA.

By Mr. Kelaher:

Q. Goodyear TBA?

A. Goodyear TBA and at this point is when I requested that both Mr. Malizia and ourselves present the case to Mr. Malizia's backer and saying we would both abide by his decision, whether it was a matter of forcing him to buy TBA from Atlantic or whether the salesman was just trying to sell him TBA.

Q. Now, you also stated what this other gentleman's decision was. I wasn't too clear on your answer on that. Would you tell us again what that was?

A. Well, the gentleman concerned, after hearing both sides of the case, advised Mr. Malizia that the salesman certainly acted within his rights to try to sell him TBA.

Q. Goodyear TBA?

A. Goodyear TBA. That is right, my salesmen sell TBA and they are selling TBA—

3163 Q. (Interposing.) I think you added something to your answer with reference to Goodyear TBA, which I am not too clear on.

A. Well, his backer made a recommendation to him that he—if he needed some product when the salesman tried to sell it to him, there was no reason at all why he shouldn't buy it and recommended that he do buy some from our salesman.

Q. And did Mr. Malizia's purchases of Goodyear TBA increase after that meeting?

A. Yes, sir.

Q. What was the approximate time of this meeting?

A. The date?

Q. The year or the month, or whatever you have.

A. I think it would be approximately three years ago.

Q. Sometime in 1955?

A. I would say in the area of 1955, yes, sir.

Q. And do you have the name of Mr. Malizia's backer that you have reference to?

A. I can't recall it at the moment. I could get it for you, yes.

Q. Could you give us Mr. Malizia's station location and town where he is located?

A. He is located on Highway 10 in Livingston, New Jersey, the station.

Q. You also stated on direct examination that it was necessary for salesmen to keep Atlantic dealers posted 3164 on improvements in TBA products and as an illustra-

tion, you referred to tubeless tires and dry charged batteries. Do you recall that testimony?

A. Yes, sir.

Q. Were you implying that Goodyear was the first to come out with these products and, therefore, it was necessary to train your dealers in that respect?

A. I wasn't implying that Goodyear was the first to come out with the product, no.

Q. Isn't it true that regardless of whether or not Good-year manufactured these items, it would be necessary for Atlantic dealers to receive some training from someplace in connection with the servicing of such products; is that true?

A. Yes, if I might add to that, air suspension just is becoming popular and we have trained our dealers on air suspension and we don't sell air suspension. We feel it is something our dealers should be conversant with; so, we have taken it upon ourselves to train them on air suspension and let them know the difficulties and hazards that can be encountered.

Q. I have a last series of questions here, and I must admit that I was somewhat surprised on your testimony on this score, and would like to have you explain it a little more.

In answer to a question as to the importance of advertising signs in the sale of batteries in service stations, you made the somewhat emphatic statement that you 3165 thought that they had no value. Do you recall that testimony in the sale of batteries?

A. I am not sure if I said no value or very little value.

Q. You were asked this question, in substance: from your long experience, is a sign on service stations a significant factor in the sales of batteries, and you said, "No, sir."

A. That is right, I do not believe it to be a significant factor.

Q. Do you think that it is a waste of money, so to speak, for Delco, Willard, Exide, and all other battery manufacturers to spend large sums of money in the advertising of their products?

A. Well, apparently they do not think so. They certainly must spend the money.

Mr. Thompson: May I ask you to clarify that question, Mr. Kelaher? Is that question directed to signs at service stations, which is the subject matter of his testimony, or national advertising?

Mr. Kelaher: I am referring to national advertising, including signs on service stations or in any other form.

Mr. Thompson: Did you so understand the question, Mr. Gaestel?

The Witness: I believe so.

By Mr. Kelaher:

Q. Is it your opinion that advertising signs, battery brands, on service stations are of no significance whatsoever in the sale of batteries of any particular brand?

A. They would have to be of a very minimum significance.

Q. How does that account for the fact that so many batteries are sold by such houses as Sears, Roebuck, for example, or other houses?

A. Newspaper advertising.

Q. And isn't it true that advertising does play an important part in the purchase of batteries?

A. That is a different type of advertising altogether.

Q. What were your reasons for saying that advertising is of no value in service stations with respect to batteries?

A. Because it is my opinion, and from observation, that people just aren't riding around looking to buy batteries for automobiles. It is a part of an automobile that the

average motorist has no idea of or knowledge of whether it is in good condition or bad condition unless some service station attendant has told him his battery is getting weak and is liable to give up operating, or he has been unable to start his car.

Tires, conversely, people can see the tread wearing down on tires, but a battery is—

Q. Is it your opinion—are you finished?

A. I can be finished, yes, sir.

Q. Is it your opinion that there is no consumer demand for particular brands of batteries?

3167 A. No, that is not my opinion.

Q. How do you reconcile that with your statement that advertising signs are of no value in service stations?

A. Well, I can only say that people do not ride around looking for batteries when they go. Now, if you have ever had a battery go on you, through reading national advertising, you may have a preference, but if you break down in front of XYZ service station, and he only handles something else—

Q. (Interposing.) Are you limiting your answer to situations where a motorist breaks down out on a distant highway in front of a service station and has to take a battery?

A. I think nine out of ten batteries are sold on an emergency basis.

Q. Isn't it a fact that many, many buyers have a particular preference and choose a particular brand for one reason or another?

A. Yes, sir, for national advertising, but I do not feel that a sign on a service station has any—helps influence their decision. I think the decision has been formed possibly from national advertising, and when they get around to buying a battery, if they buy in an Atlantic service station, they are liable to designate, I need a new battery and I

want X brand, and any intelligent dealer certainly to satisfy his customer will arrange to get X brand.

Q. Isn't it a fact that that Goodyear sign up there 3168 indicates to a customer who wants a Goodyear battery that Atlantic is the place to get it?

A. I think it refers more to—I think the impression received by the customer is more on the Goodyear tire line.

Q. You are willing to concede that the signs have great value in advertising tires; is that correct?

A. I think a sign has some value in advertising tires, yes.

Q. Do you say it has some value or has great value?

A. Well, I stated that I thought battery signs were of little consequence, and I think tire signs are a definite asset.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Any questions, Mr. Thompson?

Mr. Thompson: You, sir, have a plane at 3:40?

The Witness: Yes, sir.

Mr. Thompson: It is now 3:12. I will waive any further questions, and let this witness try to get his plane, provided Mr. Kelaher will answer a question for me.

(The witness was excused.)

ROBERT O. CARLSON was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Ballard.*

Q. Mr. Carlson, will you give your full name and 3169 address to the reporter?

A. Robert O. Carlson, 14 Banghart Place, Mount Tabor, New Jersey.

Q. Mr. Carlson, you work for the Atlantic Refining Company?

A. Yes, sir.

Q. What is your position?

A. I am a promotable dealer salesman.

Q. In the Newark district?

A. That is right.

Q. Your superior is Mr. Gaestel?

A. That is right.

Q. That is the man who just preceded you on the stand?

A. That is right. He is my sales supervisor.

Q. Above him who is the next superior?

A. Mr. Geer, the district manager.

Mr. Ballard: Mr. Kelaher, you have no objection to the witness refreshing his recollection from a memo?

Mr. Kelaher: No, sir.

By Mr. Ballard:

Q. I believe you have a memorandum there of the periods of your various jobs with Atlantic?

A. Yes, sir.

Q. You were hired by Atlantic in April of 1946?

A. That is right.

Q. And you have been with the Newark office ever since?

3170 A. That is right.

Q. Would you tell us what the year, the various jobs that you have had in that office and the years during which you had them?

A. Well, from May 1946 to August 1946 I served as service salesman in Newark; from August 1946 up until today I have been a promotable dealer salesman with the exception of a three-year period when I sold fuel oil.

Q. As I understand it, sir, that three-year period en-

compassed the time when Atlantic changed from Lee and Exide to Goodyear in the Newark area?

A. That is right.

Q. This is a map which has been introduced in evidence as RX-A-15; referring to that map would you give us a description of the geographical territory which you serve in the Atlantic Newark district?

A. Morris, Warren, Hunterdon, and a small part of Union county.

Q. Those are all counties that you designated, right?

A. That is right.

Q. And you cover those counties as a dealer salesman?

A. That is right.

Q. How many accounts do you handle in that area?

A. Eighteen.

Q. And the 18 are shown by red dots on that map?  
3171 A. Yes, sir.

Q. Can you tell us a little bit about those 18 dealers that you service, tell us a bit about how long they have been in the stations and their characteristics?

A. Well, some of the dealers have been in since 1946 and the most recent was installed in 1956.

Q. Do you know each one of those dealers?

A. Personally.

Q. Call them by their first name?

A. Oh, yes; very friendly.

Q. Do you know their wives and families?

A. Oh, yes.

Q. Generally speaking, Mr. Carlson, how often do you call on your 18 dealers?

A. At least once a week, but in an emergency, sometimes I have to go two weeks before I see them.

Q. And do you sometimes call more often than once a week on a particular dealer?

A. Oh, yes.

Q. What do you consider to be your principal duties as a promotable dealer salesman?

A. Well, first, to see that the stations are manned and also to see that they are the best possible outlet for Atlantic products.

Q. Now, in connection with your first statement, 3172 the question of keeping operators in the stations, is that a particularly difficult problem in your area?

A. That is a difficult problem in every area. Locating dealers is a hard part of our job, good dealers.

Q. How many turnovers of this sort have you had while you have had this territory?

A. In the last four years I have had six changeovers.

Q. You consider yourself fortunate?

A. Very fortunate.

Q. I don't want you to go into too much detail, but on those six turnovers, what were the reasons why the dealer who went out left his station?

A. One fellow just wanted out, his wife was pressuring him; another fellow had had a heart attack, and it was doctor's orders that he get out of that activity.

Q. Would it be safe to say that in each instance the dealer initiated the—

A. (Interposing.) He requested it, that is right.

Q. Now, in any of those instances, was the reason the dealer left the station, did it have anything to do with TBA?

A. None whatsoever.

Q. One other question. On those six instances did they occur at the end of the particular dealer's lease or in the middle?

A. I don't recall offhand, but some I know would 3173 be in the middle; they weren't near termination. They wanted out and we arranged it.

Q. That has been Atlantic's policy as far as you know it?

A. Oh, yes.

Q. Now, again trying to keep your testimony to a minimum, I believe you were in the hearing room this morning while Mr. Gaestel, your superior testified?

A. That is right.

Q. Did you hear his testimony concerning the difficulty in obtaining dealers and the methods by which he goes about obtaining new dealers?

A. Yes.

Q. Do you agree with the statements which he made here this morning on those subjects?

A. I certainly do.

Q. That has been your experience also?

A. Yes, I have used everyone of those efforts.

Q. I want to ask you one specific question. There is an Atlantic folder of record as RX-A-18, it is called "What a Service Station Can Mean to You." Mr. Gaestel's copy is actually of record. Do you have a book similar to this?

A. Yes, I do, carry it all the time.

Q. Is it identical with this?

A. Identical.

Q. And you use it?

3174 A. All the time.

Q. Does the copy that you use contain the Estlow letter of June 24, 1955?

A. Yes.

Q. Now, when you say you use it, sir, you use it in making your initial contact with a dealer applicant; is that right?

A. Yes, with a prospective dealer.

Q. And you go over it with him page by page?

A. Thoroughly.

Q. Sir, there was testimony this morning to the effect

that that book was not in use, this particular book was not in use until 1955. What did you use in its stead before 1955?

A. Well, we used approximately everything that is said in there but one of the problems that came up was that quite frequently prospects would want to discuss things other than what we wanted to accomplish in the interview, and they would wander, and, of course, to be friendly and keep them talking, we would wander with them. This book gave us the opportunity to hold the conversation in line and try to show them what we were offering them if they wanted to be an Atlantic dealer. It gave us a good basis to keep the interview more in the order in which we would like to present it.

Q. Mr. Gaestel also spoke this morning about the efforts that were made in selecting a new dealer and in selling him on the Atlantic brand choice, the efforts that were 3175 made to explain and sell the Goodyear TBA line. I don't want to go into those again. I want to ask you one specific question.

Do you or do you not when you interview a dealer applicant specifically state Atlantic's no-forcing policy with respect to TBA?

A. Oh, yes, we go through that book from cover to cover, and we make them read that letter because a lot of times it is a question they request, "Am I forced to go with this Goodyear policy?" and we turn to that and show them, "Here is your answer," and we don't have to answer it. It is there for them, no forcing.

Q. There is in the back of this same exhibit a mimeographed set of questions and answers which are marked for salesman's use. There was reference to questions and answers marked 3, 4, and 5 this morning (showing document to the witness). Have those questions been asked

of you by a dealer applicant, and, if so, have you given the answers that are set out there?

A. Yes, and I don't use this phraseology in giving an answer, but the same thought applies, that we never throw a dealer out if he builds up his business properly, and he is not forced to handle our TBA line. And "Must I be open on Sundays?" Competitive practice is what dictates that. And "Do you tell me what hours I must be open?" No, we don't tell him what hours he must be open.

I have frequently requested that if he has any idea 3176 but doesn't know just how long to operate a station that starting at 7:00 in the morning and operating until 11:00 at night and explain that 7:00 o'clock in the morning, that is when most people are going to work and by 11:00 o'clock at night, that is when the entertainment is over and towns generally are closing down. And over a period of time he will see for himself what his competitive stations are doing who have been in business and know what the town will do and then it is up to him.

Q. To judge for himself?

A. That is right.

Q. Now, sir, the second duty that you mentioned with reference to your job was the question of making sure that each of your 18 stations sells as much Atlantic Refining Company petroleum products as possible?

A. Right.

Q. What do you think are the requisites that a station has to have in order to sell a maximum amount of Atlantic petroleum products?

A. Well, he should have a sufficient inventory of product on hand to be able to adequately serve the public at their demand.

Q. Right.

A. I think most times a car pulls in for service it is for gasoline; so, there should be a good supply of that on hand.

Next, I believe that most frequently a car is lubricated; so, motor oil is a big item because also when they are buying gasoline their oil is checked on the drive-in for service.

Third, I think they should have an adequate supply of any TBA products that are necessary to require service to the customer. It should be adequately stocked.

Q. When you approach a station in your automobile, are there other criteria that you measure the station by?

A. Yes. The first thing I have grown in the habit of doing is looking at a station from its appearance angle as though I was the customer approaching it. Is this the type of station I want to pull in? What can I find that I should talk to the dealer about?

When I am in the station I will look his personnel or listen to the way they talk to customers, maybe talk to them about something I can help them with in making a sale, or suggesting that they wear a clean uniform as it will be more presentable for the station and the dealer.

Q. Are you interested at all in the internal operation or the management or the management of the station?

A. Very much so. So much so that a lot of the dealers ask me if they are doing a good job and we measure in the light of what other dealers are doing and try to compare and if it appears that there is a weakness in selling—let's take, for instance tires—we try to build that up so 3178 that he becomes a more successful dealer financially.

Q. Would it be fair, Mr. Carlson, to say that trying to summarize what you have just stated that the way you measure a station is the products, the service, appearance of the station, personnel, management?

A. Right.

Q. Now, in the light of those tests, do you care whether or not the TBA that is in the station is Goodyear or non-Goodyear?

A. No, it is not the most important whether it is Goodyear or another brand. The successful dealer will sell TBA as such because it is an integral part of the business, and he is in business to make money and it is my job to help him make money.

Q. But you do try to sell Goodyear TBA?

A. Oh, yes.

Q. And would you take a second, sir, and in your own words tell us what sales pitch you use with your dealers to get them to take on the Goodyear TBA line?

A. Well, a sales pitch would go along the lines of, have they tried any Goodyear TBA, trying to find out why they resist it, and then building up with a nationally advertised product is easier to sell, more people know about it, naturally. There is a quality there, it has to be there. They have to back their advertising, naturally. It is available at several sources. In my particular marketing area, whether through my own supply dealer or other supply 3179 dealers, they are Goodyear dealers,

There has been resistance, and in some cases solid, and there is no sense in forcing that man to try to change him.

Q. You mean, you mean there is no sense in trying to sell that dealer—

A. (Interposing.) No, we will try to sell, but when you continually get No, No, No, and what he feels a qualified reason, you realize that you have to wait then for an opportunity to introduce it. You won't get it through just open selling by continually hammering at it.

Q. Now, in promoting the sale of Goodyear products, aside from the pitch that you have just spoken to me about, do you devote some of your time, as Mr. Gaestel was speaking about this morning, to double-teaming in these various promotions?

A. Oh, yes.

Q. How often does one of these promotions on Goodyear T, B or A come up?

A. Well, those promotions break—I can't give you a calendrical example—maybe two or three times a year. With regard to accessories it might be more frequently.

I have in mind this much, that tires, you have a winter type of tire and you have a normal type of tire. Naturally you sell a winter type of tire in the wintertime; so, we have

a winter promotion. Likewise, in the spring, when 3180 they are converting over to the regular treads we have another promotion. But, then, you have polishes, you have spark plugs, filters, in which we double-team with other than our Goodyear salesmen, and those are considered promotions, too.

Q. In selling Goodyear TBA, have you, yourself, actually taken orders from the dealer and transferred them to the Goodyear supply point?

A. Frequently.

Q. Have you ever had occasion to pick up the actual merchandise and bring it out to the dealer?

A. Yes.

Q. Do you concern yourself much with a question of competitive prices ascertaining what they are and trying to relay them to Goodyear through Atlantic?

A. That is part of my job, yes.

Mr. Kelaher: May I have that question and answer.

(The reporter read the question and answer.)

By Mr. Ballard:

Q. Mr. Carlson, do you agree with the TBA policy of Atlantic as stated by Mr. Gaestel and as understood by Mr. Gaestel this morning?

A. Do you mean the use—I mean the no-forcing?

Q. Yes, I mean is that your understanding of Atlantic's policy?

A. Yes. A good salesman never forces, he sells.

Q. Well, I want to know just is that Atlantic's 3181 policy as far as you understand it?

A. Yes.

Q. And how did you yourself come to understand that to be Atlantic's policy?

A. Well, when I first became a promotable dealer salesman and we were handling our own TBA line, we were always told to sell it. We couldn't force a dealer then.

At the time I was a fuel oil salesman, I got a copy of Mr. Colley's original letter stating there would be no forcing.

Q. Is that his letter of March 1, 1951?

A. That is right.

Mr. Ballard: Will you stipulate, Mr. Kelaher, that he has reference to CX-150?

Mr. Kelaher: Yes.

Mr. Ballard: It is stipulated that the witness has just made reference to CX-150.

By Mr. Ballard:

Q. So, you received Mr. Colley's letter even though you were a fuel oil salesman at the time?

A. That is right.

Q. Has the policy been brought home to you in any other fashion since you have been with the company?

A. In the refresher course I took in training school, it was brought up there.

3182 Q. It is in that book?

A. It is in that book when that was presented to us, yes.

Q. And by that book I mean Exhibits RX-A-18: Is that correct?

A. Yes.

Q. Mr. Carlson, have you ever forced or attempted to force an Atlantic dealer to buy Goodyear TBA?

A. No, never.

Q. Have you ever pressured an Atlantic dealer to buy Goodyear TBA?

A. No, never.

Q. I just have one final series of questions.

You have, I think you said, 18 dealers in your district?

A. That is right.

Q. Do you visit those dealers, we will say, on the average of once a week?

A. That is right.

Q. Suppose you and I were to get in a car tomorrow morning and drive throughout your district and visit those 18 stations, would we see TBA openly displayed?

A. In every station.

Q. Now, would you tell us some of the brands of tires, batteries and accessories that we might see there stocked?

A. Tires, you would find Goodyear, Armstrong, a 3183 tire known as ATA, Gates, and Firestone.

Mr. Kelaher: Firestone, too?

The Witness: Yes, sir.

By Mr. Ballard:

Q. If we drove into Charley Wyckoff's station, what would we see—

Mr. Kelaher: (Interposing.) Objection, your Honor. Mr. Wyckoff testified in this case. I think that would be repetitious to go over that type of testimony.

Mr. Ballard: Strike the question.

Hearing Examiner Kolb: Are you asking him what he saw in Wyckoff's station?

Mr. Kelaher: That is what he asked him.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: He asked him what he saw in Wyckoff's station. Wasn't that it?

Hearing Examiner Kolb: Yes, that is what it has to

mean. What he saw displayed. Isn't that what you are asking him?

Mr. Ballard: I am asking him what we would see displayed if we went into Mr. Wyckoff's station.

The Witness: Lee tires, and we would also find Exide batteries.

By Mr. Ballard:

Q. While we are on batteries, on this trip that I 3184 am proposing here, what type of batteries would we see displayed in your dealer's stations?

A. Willard, Delco, Rebatt.

Q. Goodyear?

A. You would find Goodyear. I think that is most of them.

Q. How about accessories, sir?

A. Accessories, you could find—they are too numerous to mention. You find every kind of accessory necessary to operate a station under good dealer operation.

Q. Some of it Goodyear accessories or in the Goodyear line, some of it outside of the Goodyear line?

A. That is right.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Cross-examine.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Carlson, you stated you have 18 accounts in your sales territory. Are all of those accounts lessee dealers?

A. No, sir; 14 are lessee.

Q. Are the remaining four contract dealers?

A. Four contract dealers.

Q. Are all of the contract dealers what were referred to by Mr. Gaestel as real service station outlets?

A. Oh, yes.

Q. They are all potential TBA outlets; is that correct?

3185 A. Yes.

Q. When you are interviewing prospective dealers for Atlantic stations, you do discuss TBA, I understand?

A. Yes.

Q. You are the gentleman who originally screens, makes the initial screening of applicants, as I understand your set up; is that correct?

A. That is right.

Q. At that time you discuss Goodyear TBA with them?

A. Yes.

Q. And then they go from you to the sales supervisor?

A. That is right.

Q. And either he alone or in your presence you go over the applicant's position or you ask him questions and you again discuss Goodyear TBA; is that correct?

A. That is right.

Q. And then from there you go to the district manager who again discusses Goodyear TBA with the gentleman, with the prospective applicant; is that correct?

A. Yes.

Q. And if he meets with the approval of all three of you gentlemen, then he goes to a training school, a five-week training school, and there again Goodyear TBA is discussed; is that correct?

A. That is right.

3186 Q. And then, after that at dealer meetings from time to time Goodyear TBA is discussed; is that correct?

A. No, it would depend on what the dealer meeting is about; if it is for TBA, yes.

Q. Then, you would discuss the Goodyear TBA?

A. Oh, yes.

Q. When you are discussing Goodyear TBA with pros-

pective applicants, do you point up the fact that Atlantic service stations carry the Goodyear service station identification for the most part?

A. Yes.

Q. You point that up to them. Is that a selling point with you?

A. Well, as a field man advertising is a selling point with me.

Q. You recognize the value of advertising, do you not?

A. I have to say that, yes.

3187 By Mr. Kelaher:

Q. And do you tell the prospective applicant that in the consumer's mind Atlantic is identified with Goodyear and Goodyear is identified with Atlantic? Isn't that a selling point for an applicant for a potential Atlantic dealer to handle Goodyear TBA?

A. If this man is a man looking to me for advice, I would, because I am sold on it myself. But if it is a man who has been in business and has convictions, then he can probably do what he wanted to.

Q. But you do point up the fact that this advertising of Goodyear in Atlantic stations is of paramount importance as far as you are concerned?

A. No, I wouldn't say it is of paramount importance.

Q. Well, it is of importance?

A. It is a good way to sell.

Q. And it is a good way to sell a potential applicant for Atlantic station on the value of handling Goodyear TBA, isn't that correct?

A. Yes.

Q. You were present when Mr. Gaestel was testifying with respect to hours of operation, were you not?

A. Yes.

Q. And the dealers in your--I would like to ask you a couple of questions about that. Your dealers, the 3188 dealers in your territory receive the 11-point lease letter which has been identified as CX-88-B, and with which I think you are familiar; is that correct?

A. Yes, sir.

Q. As a promotable dealer salesman, you are on what has been referred to variously as a bonus or quota system in connection with the sale of Goodyear TBA; isn't that right?

A. Yes.

Q. And that, of course, is an incentive to you as a promotable dealer salesman to sell Goodyear TBA to Atlantic service stations; is it not?

A. Yes.

Q. At one time, as I understand your record, this chronological record with Atlantic, you were promoting the sale of Lee tires, Exide batteries, and the accessory products—

A. (Interposing.) That is right.

Q. (Continuing.) —sold by Atlantic at that time?

A. That is right.

Q. And at that time did you tell Atlantic dealers that it was to their advantage to handle Lee tires, Exide batteries and so forth?

A. To their advantage. I don't understand what you mean. At that time I was selling Lee tires and tried to sell Lee tires, and I met resistance then with people who wanted to buy Goodyear, Firestone and something else.

Q. But you were attempting to promote the sale 3189 of Lee tires, Exide batteries and so forth?

A. Yes.

Q. Would it be fair to say that as a promotable dealer salesman that you would vigorously promote the sale of any brand of TBA which the Atlantic hierarchy sponsored? Would that be correct?

A. You say vigorously promote?

Q. You can strike the word "vigorously" if that is bothering you.

A. Yes, because I promote where I can.

Q. One question here about double-teaming with suppliers of products other than Goodyear. Are you referring to products like Du Pont?

A. Yes.

Q. And other name products?

A. Polishes.

Q. Which are in the Goodyear TBA line; is that correct?

A. Yes, sir.

Q. You gave some testimony with respect to Mr. Wyckoff and if my memory serves me correctly—and this may have been inadvertent on your part—but you did not describe all the products that you would see in his station. You said you would see Lee tires and Exide batteries.

A. Yes. I didn't go into accessories on anybody else.

Q. I am referring to tires.

3190 A. You may find a few Goodyear's.

Q. Well, he testified that he handles Goodyear tires.

A. He does.

Q. You didn't mention that on your direct. I just wanted to correct the record on that:

A. Yes. All right.

Q. And you weren't asked either if you went into Mr. Wyckoff's station, what identification you would see on his window and what sign you would see outdoors. Do you recall what you would see?

A. Yes, in the window you would find the current promotion.

Q. What brand? I am talking about the window valance.

A. You would find Goodyear.

Q. And the outdoor sign?

A. You would find a Goodyear sign on his light pole and you would find an Exide battery sign on his fence.

Q. On his fence?

A. Yes.

Q. But no Lee tires sign on his fence?

A. I believe he has a Lee tire sign on a tire rack right outside the bay door.

Q. Not on the fence, I think he testified.

A. Nothing on the fence, no, sir.

Q: You said, "Oh, yes, you would see a Goodyear window valance on his station." Are you implying that 3191 that would be on all of the Atlantic stations in your territory, where they have window valances?

A. Generally, yes.

Q. Do most of them have the big outdoor sign, the pole, Goodyear sign?

A. Yes.

Q. Isn't it true that the majority of your dealers stock Goodyear tires and stock Goodyear TBA?

Mr. Ballard: I would like to ask Mr. Kelaher to either ask one question or ask them one at a time. That is two questions.

Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

Mr. Kelaher: If there is any question about it, I will just ask him if it isn't true—

Hearing Examiner Kolb (Interposing): Ask about the tires and then ask about the TBA.

The Witness: It is hard to answer it just that way.

Mr. Ballard: May I also request that Mr. Kelaher clarify the use of the word "stock". We have had this problem before.

Mr. Kelaher: Would you—

Mr. Ballard (Interposing): That you clarify the use of the word "stock". I believe your question is, do they stock Goodyear TBA—

3192 Hearing Examiner Kolb: (Interposing.) I think the witness knows what stocking is.

Mr. Kelaher: Counsel used the word "stock" in his question that I am going through here, and I think we know what he means.

The Witness: Well, when it comes to tires, to be honest with you, I have never figured whether the majority were Goodyear. I guess they would be.

By Mr. Kelaher:

Q. I beg your pardon?

A. I guess the majority of my dealers stock Goodyear tires. On batteries, it favors the other way. On accessories, they lose our identification on the shelf.

Q. On your accessories a lot are name-brands, like Du Pont, Johnson's and so on?

A. Jobbers sell; so, I can't identify them.

Q. Although you do have Goodyear fan belts and other products of that type with Goodyear on them?

A. Yes, sir, but the majority of my dealers stock Gates fan belts.

Q. But you do have some dealers who do stock Goodyear fan belts, I presume?

A. Yes.

Mr. Kelaher: No further questions.

Mr. Ballard: Will your Honor indulge me just a  
3193 minute?

*Redirect Examination by Mr. Ballard.*

Q. This is just a question of straightening out the record, Mr. Carlson. On cross-examination, when Mr. Kelaher was discussing with you the process of interviewing a new applicant—

A. (Interposing.) Yes.

Q. (Continuing.) —I believe you stated that an experienced man or a man who had had some business in the service station before, in a service station before, can do what he wants. Did you mean by that to imply that an inexperienced man can't do what he wants?

A. No, what I meant to say was the inexperienced man generally looks to us for advice to get him started. As a salesman for Atlantic, I would naturally suggest the Goodyear line. He has a right to refuse that if he has a preference for something else. But the experienced dealer who has used some other TBA line and knows it is confident in it, maybe I can't sell him the Goodyear line right then.

Q. Mr. Carlson, let me give you a piece of paper, if I may, and a pencil. Would you figure out here, first, let me ask you one question. In 1957 did you receive incentive pay based on TBA sales to your stations?

A. Yes.

Q. Don't tell me how much it was.

3194 A. No.

Q. And in the year 1957 you were also paid a salary by the Atlantic Refining Company?

A. Oh, yes.

Q. Would you figure out here—keep the figures to yourself, if you would—the percentage that your TBA incentive pay bore to your salary in the year 1957?

Mr. Kelaher: Off the record a minute.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The Witness: It amounts to 2.3 percent.

Mr. Ballard: I have no further questions.

Mr. Kelaher: May I see it?

The Witness: Certainly.

(Document handed to counsel.)

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Did you in 1957 receive approximately \$200 as your incentive pay for the sale of Goodyear tires, batteries, and accessories?

A. That is right.

3195 Mr. Kelaher: Is that all?

Mr. Ballard: That is all.

*Recross Examination by Mr. Kelaher.*

Q. Mr. Carlson, as I understand the incentive system, that means that you had an increase in your Goodyear TBA sales in your territory over the preceding year; is that correct?

A. That is correct.

Hearing Examiner Kolb: Is that all?

Mr. Kelaher: That is all.

Hearing Examiner Kolb: That is all, Mr. Carlson.

(The witness was excused.)

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

This hearing is adjourned until November 3, for two weeks, at Washington, D. C.

Mr. Thompson?

Mr. Thompson: Of course, we will do it here if we can.

Hearing Examiner Kolb: We will set it for Washington. If anything comes up and you want to change it, you let me know.

Mr. Thompson: Yes, sir.

Hearing Examiner Kolb: The hearing is adjourned.

3197

Court Room No. 3  
United States Court House  
9th and Market Streets  
Philadelphia, Pennsylvania

Met, pursuant to notice, at 10:00 o'clock a.m.

*Following Testimony Taken At Philadelphia*  
3198 Hearing Examiner Kolb: The hearing will come to order.

Mr. Kelaher: Before we begin our proceedings, I would like to express our regret at the passing of the distinguished counsel for respondent Atlantic, Mr. Thompson, since our last hearing.

Mr. Fred Ballard: I appreciate that very much indeed.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Fred Ballard: If your Honor please, before calling my first witness, I would like to explain, as I have to counsel supporting the complaint, that the witnesses we propose to call this morning are dealers and ex-dealers, from the Atlantic dealers and ex-dealers, from the Philadelphia area, who were mentioned in the testimony taken before your Honor in this city I guess in July of 1957.

I don't know whether any of the names will be familiar. It was June or July. But it may make it easier if you have that much background on them in any event.

Hearing Examiner Kolb: Was that July 7?

Mr. Fred Ballard: They were during the hearing 3199 in June, 1957, at various places, and I think all the page references will be noted on the record as we get to them.

Hearing Examiner Kolb: All right.

EDWARD RINGENARY was called as a witness on behalf of the Respondent Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Fred Ballard.*

Q. Will you give the reporter your name and address?

A. Edward Ringenay, southeast corner of Board and Wallace is my business address.

Q. Mr. Ringenay, you are currently an Atlantic dealer, is that right?

A. Yes, sir.

Q. And I believe you lease the station at Broad and Wallace Streets in Philadelphia?

A. I do.

Q. How long approximately have you had that station?

A. It will be six years in February.

Q. In other words, you took that station in February—

A. February 17, 1953.

Q. Previously, did you have another Atlantic station under lease?

A. I had two others.

3200 Q. Where were they?

A. Glenwood and Cambria, I think, from 1939 to 1942, and after the war, from '45 to '52, I was at Fifth and Spring Garden.

Q. Mr. Ringenay, speaking of TBA, which, of course, means tires, batteries, and accessories, do you handle and sell tires, batteries, and accessories at your present station?

A. I certainly do.

Q. Where do you buy the greater part of those tires, batteries, and accessories?

A. From Elwood Kaiset.

Q. He, of course, is an Atlantic supply man, a Goodyear supply point?

A. Yes.

Q. What brand of tires and batteries does he carry?

A. Goodyear.

Q. Now, during—have you bought from him during the entire time you were at the Broad and Wallace Street station?

A. You mean was he a supplier then?

Q. Yes. Have you been buying during that period?

A. Yes.

Q. When you were at Fifth and Spring Garden Streets, did you buy from Elwood Kaiser?

A. Yes.

Q. During that time, what brand of tires was he carrying?

3201 A. Lee and Exide, and then they went Goodyear.

Q. Mr. Ringenay, do you also buy some TBA from other sources than Elwood Kaiser?

A. Sure.

Mr. Kelaher: Objection, your Honor, to the form of the question.

Hearing Examiner Kolb: The objection will be overruled. It is a preliminary question.

By Mr. Fred Ballard:

Q. You may answer.

A. Yes. I buy outside, from other suppliers.

Q. Could you name one or two?

A. Gaul-Derr & Shearer; Kit Auto Parts; Shankin Brothers; Broad Motors; Harry Crouse; Oldsmobile; Scott Smith Cadillac; any other automobile agency, too.

Q. Now, the things you buy from the automobile agencies, are they parts for the automobiles?

A. Yes, parts.

Q. We are interested primarily in tires, batteries, and accessories, and not so much parts.

A. Well, I buy other tires at J. P. Burke. That is U. S. Royal dealer. I get most of my recapping done there.

Q. Now, Mr. Ringeney, referring to the merchandise that you buy from these other suppliers, which you just testified about, do you display those in your station?

3202 A. Certainly.

Q. Are these visible there for the Atlantic salesman to see?

A. Right on the shelf.

Q. Has he ever told you to stop buying them?

A. No.

Q. Has he ever told you to remove them from your station?

A. No.

Q. Or to hide them?

A. No, sir.

Mr. Fred Ballard: Off the record.

(Discussion off the record.)

By Mr. Fred Ballard:

Q. Mr. Ringeney, do you know a salesman named Al Vick, from Philadelphia, a wholesale distributor?

A. Yes, sir.

Q. Excuse me, John J. Vick, from Philadelphia, a wholesale distributor.

A. I always knew him by Vick. I didn't know the first name.

Q. Now, June 25th of last year, Mr. Vick testified in these same proceedings; and he said, at page 711 of the transcript—the question was asked of Mr. Vick on page 710, the Hearing Examiner said that "there is pending a question as to instances. We have stopped him from going

ahead because he hasn't stated the definiteness of it, and he is now attempting to do that."

Mr. Vick then went ahead for a while and he finally 3203 testified in these words, and the words I am now about to use are Mr. Vick's. He said, "Another instance, I called on Mr. Ed Ringeney, Broad and Walnut Streets, and this was about two months ago"—that would have been in April 1957—"I called on him occasionally, and I asked him to buy Prestone, Exide, Kendall, and he says, 'Are you out of your mind? Why, they would cancel my lease immediately.' He says, 'They even have spooks in the territory.' I said, 'What do you mean by spooks?' He says, 'Why they have fellows coming in here and trying to offer merchandise at lower prices, just to see if you would buy from someone else.' He again stated he would even testify, if called, against the Atlantic Refining Company. He again wishes us a lot of luck and wished we would organize to fight against Atlantic, against the pressure of their purchases."

Mr. Ringeney, do you recall any such conversation as that?

A. Definitely not.

Q. Do you feel that Atlantic Refining would cancel your lease if you brought products from Mr. Vick?

A. I do buy outside and they don't cancel it.

Q. Is it your understanding that Atlantic has spooks in the territory?

A. Well, I never used that expression. I don't know where he got it.

3204 Q. Do you think Atlantic has people coming into your station, trying to offer merchandise at lower prices, to see if you would buy from them?

A. No.

Q. Did you ever tell Mr. Vick or anybody else that you wished he would organize to fight against Atlantic?

A. Absolutely not.

Mr. Fred Ballard: I have no further questions of Mr. Ringenay, but Mr. Kelaher, representing the Federal Trade Commission, will probably have some questions to ask you.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Ringenay, when you were at your first station, Glenwood and Cambria, was TBA an important factor in those days?

A. Well, I don't think Kaiser had the variety he has now. I don't know what you mean by "important". I think it was important with me.

Q. Was it as important then as it is, as it has been since World War II, insofar as income is concerned?

A. It was with me.

Q. You have always been—

A. (Interposing.) With me it was always important.

Q. Now, do I understand from the answer you gave 3205 me that beginning in 1939 you began to purchase from Mr. Kaiser, TBA?

A. Yes.

Q. And at that time was he handling Lee tires, Exide batteries, and a line of accessories?

A. I think he was. I wouldn't want to be—I believe it was Lee and Exide though.

Q. What caused you to purchase from Mr. Kaiser back at the outset of your career as an Atlantic dealer?

A. We always got service.

Q. Was that part of the Atlantic TBA set-up at that time?

A. I don't believe they had a set-up of TBA at that time. I would have to look back at my records. I don't think so.

Q. At that time was Mr. Kaiser also an Atlantic service station operator?

A. Yes.

Q. Was he recommended to you by Atlantic?

A. That I don't remember either.

Q. Now, going to your next station, Fifth and Spring Garden, was that station a larger station or more important station than the first one?

A. Yes, sir.

Q. Did that represent somewhat of a promotion for you in a sense?

A. Well, I came back after the war, in 1945, and I went to the company, and they offered me that spot, and I accepted it.

3206 Q. Now, in the beginning of 1945, at Fifth and Spring Garden, what TBA did you carry?

A. We had Lee and Exide.

Q. At that time did you also resume purchasing from Elwood Kaiser?

A. Yes, sir.

Q. At that time did he handle a line of accessories?

A. He had some items.

Q. He had expanded his line to some extent?

A. Yes.

Q. Did he handle Thermoid fanbelts and other products?

A. Well, I wouldn't want to name the products. I forgot.

Q. Do you remember some of the brand names he handled?

A. I believe it was Thermoid.

Q. Now, how long did you continue to purchase Lee tires, Exide batteries, and accessories from Mr. Kaiser?

A. I continued until he switched to Goodyear.

Q. And that was, the record shows in this cases on or about March 1951; is that correct?

A. Yes.

Q. Now, in or about March 1951 did you attend a meeting

of Atlantic dealers concerning the change-over to Goodyear TBA?

A. I believe they had a dinner—I believe they had a luncheon meeting at the Ben Franklin Hotel. I am not positive.

Q. At that meeting was it announced that Atlantic 3207 was going to sponsor Goodyear TBA?

A. I don't remember that.

Q. Do you recall any of the circumstances leading up to your change-over from Lee, Exide, etc., to Goodyear TBA line?

A. May I have that question again please?

(The reporter read the pending question.)

The Witness: I don't recall any, because that is all with Kaiser, whatever I would take from Kaiser.

By Mr. Kelaher:

Q. Isn't it true that you were asked to sign a Goodyear associate dealer contract at that time, do you recall that?

A. No, I don't.

Q. Do you know whether or not you did sign such a contract?

A. I couldn't swear if I did or not.

Q. Well, the record in this case shows you did, for your information.

A. Well, I certainly don't remember it.

Q. Now, I am referring to CX-160-A and -F, for the record.

At the time of the change-over to Goodyear TBA, was a call made on you by an Atlantic salesman and a Goodyear salesman to discuss the matter with you?

A. I don't recall that either. I mean that is so far back.

This is only 1951 I am talking about.

A. That is seven years.

Q. At that time, prior to the change-over, what 3208 service station identification did you have in your station? I am talking about window valances and outdoor signs.

A. I think the only thing I had was an Exide clock, if I remember correctly.

Q. Did you have a Lee sign of any kind?

A. I don't remember. I believe we had a Lee sign nailed on the fence down at the far corner. I think that is all I had.

Q. Now, after the change-over to Goodyear TBA, was your service station identification changed to Goodyear? Was a window valance put in the station?

A. I think so, yes.

Q. Was a Goodyear sign put up outside the station?

A. I don't think they put any Goodyear signs at my Fifth Street station.

Q. Didn't you change to Goodyear TBA because Atlantic began to sponsor Goodyear TBA in 1951?

A. I would sell anything Elwood Kaiser would sell.

Q. And he was definitely a part of the Atlantic set-up with respect to TBA, wasn't he?

Mr. Fred Ballard: I object to that question, your Honor.

Hearing Examiner Kolb: Read the question.

(The reporter read the pending question.)

Hearing Examiner Kolb: Objection overruled.

3209 The Witness: I really don't know what his set-up was, Atlantic, or any sort of contract, or anything else.

By Mr. Kelaher:

Q. Isn't it a fact that Elwood Kaiser was a designated supply point in the Atlantic-Goodyear TBA program?

Mr. Fred Ballard: I object again, your Honor. There is no showing this witness knows what the designated supply point in the Goodyear program is.

Hearing Examiner Kolb: He can testify to what he knows.

The Witness: I don't know. I would buy anything he sold. I don't know who tells him what to sell, but I would buy it.

By Mr. Kelaher:

Q. Isn't it a fact that Atlantic told you in 1951 that Elwood Kaiser was your supply point for Goodyear TBA?

A. I never recall any time that Atlantic told me anything that anyone was my supplier.

Q. You have no recollection of that?

A. No, sir.

Q. Now, in 1953, you moved to your present location at Broad and Wallace?

A. Yes, yes.

Q. Is that a larger station than the Fifth and Spring Garden?

A. Yes, sir.

3210 Q. And the location is much better, is it not?

A. In some respects.

Q. Broad and Walnut is right in the heart of the downtown area.

A. Broad and Wallace, you mean?

Q. Yes.

A. Yes, Wallace, 660 North on Broad Street.

Q. But that was, or is a larger station than the previous station?

A. Yes, sir.

Q. And does that in a sense represent a promotion?

A. Well, I hope it does.

Q. Now, when you went into the Broad and Wallace station, were there Goodyear window signs up and a Goodyear sign outside?

A. No, the whole station was torn down and rebuilt, when I took it over.

Q. So it was a newly built station?

A. I worked out of a shack.

Q. And then when the station was built, what identification was on the station? Was it Goodyear window valances?

A. Oh, yes, Goodyear.

3211 Q. And Goodyear outdoor signs?

A. Yes, but I have taken them down.

Q. You have taken the outdoor sign down?

A. (Nodding yes.).

Q. Why was that?

A. I think I have better signs, I took them down several years ago. I use them for oil since anything I run a special on.

Q. But you have the Goodyear window valance?

A. Yes.

Q. Now, who became—maybe you already testified on this—Mr. Kaiser is still your Goodyear TBA supplier?

A. Yes, sir.

Q. So reviewing your testimony, your principal supplier through all of your years as an Atlantic dealer has been Elwood Kaiser?

A. Yes, sir.

Q. Now you stated on direct examination that you also purchased some TBA from other jobbers besides Kaiser. Do you recall that testimony?

A. Yes.

Q. What do you purchase from Broad Motors, for example, or was that included in your answer with respect to hard parts?

A. Well, I would purchase anything that we may 3212 be short of, because we can run across the street and buy it.

Q. Do you purchase tires from them?

A. No, sir.

Q. Batteries?

A. No, sir.

Q. What type of accessories do you purchase?

A. Anything that would be a genuine part for Ford cars, or well maybe a radiator hose, if I was out of it, we could run across and get it.

Q. Is it mostly what are known in the trade as hard parts?

A. Yes, genuine parts; yes.

Q. Now you also mentioned a firm whose first name is Shankin. I missed the last part of it. Do you purchase tires from Shankin?

A. No.

Q. Batteries?

A. No.

Q. Do you purchase hard parts from Shankin?

A. Well, the accessories part of it I purchase from him would be like when he would have a special on Rizzone or CD2 or something like that.

Q. What is Rizzone?

A. It is a motor oil additive.

Q. And CD2 is also?

A. The same, yes.

3213 Q. So your purchases are limited from Shankin?

A. And then I get just about all my janitorial supplies from him, cleaning supplies, and that is basically what he is interested in selling. And I also get my, I get my brake fluid off him, too.

Q. Now Kitt Auto Parts, do you buy tires from him?

A. No, he doesn't sell tires.

Q. Batteries?

A. No.

Q. What do you buy from Kitt?

A. Just parts.

Q. Hard parts again?

A. Yes.

Q. That gets us down with respect to TBA to Gaul, Derr & Shaerer. Do you buy tires from him?

A. No.

Q. Batteries?

A. The only time I would ever have an occasion, it would be a very odd battery, that Kaiser wouldn't have, some odd truck or maybe some motor boat or yacht battery or something.

Q. So it would be just sporadic purchases?

A. Yes, in that line. But I bought a lot of Prestone from him.

Q. Now, what else do you buy from that firm?

3214 A. I do the same thing with Gaul Derr & Shaerer like I said about—if Kaiser don't have it, I will go there—when I run out of Prestone, I will go there, and I get all my—the same thing with mufflers and tail pipes, if Kaiser don't have it, I get it there.

Q. So you just purchase on a fill-in basis from Gaul Derr & Shaerer?

A. On some items.

Q. And otherwise you purchase nothing from him, is that right?

A. I wouldn't say several hundred dollars a month is nothing.

Q. Maybe we are not—I am not following your answer. Let's confine this to accessories. Now do you just purchase what are known in the trade as accessories, on a fill-in basis from Gaul Derr and Shaerer?

A. What are you going to class as accessories, motor oil additives or—

Q. Well, fanbelts, hose, chemicals, polishes.

A. We get fanbelts; hoses, motor oil additives, like Rizzone, when they have a good deal; Prestone, tail pipes and mufflers, which is an accessory.

Q. However, as I understood your testimony, your primary TBA supplier is Mr. Kaiser?

A. Yes, sir.

Q. Do you attend Atlantic dealers meetings from time to time?

3215 A. When it is an advantage to me, I go.

Q. Now at those meetings, have you heard Goodyear TBA discussed by Atlantic?

A. Well, when they would come out with a new item to promote or something along those lines.

Q. And are there Goodyear personnel present at such meetings from time to time?

A. It has been a long time since I attended one where there was. I don't recall.

Q. Now, with respect to the testimony of Mr. Vick, the Philadelphia wholesale distributors, Mr. Vick has called on you from time to time, hasn't he, over the years?

A. Well, up until the time this letter—when was that letter dated?

Q. Which letter are you referring to?

A. His testimony that was just read here, was that June '57 or something?

Q. June '57.

A. Yes, up to that time I used to see him about every week, and he didn't call on me to sell, he would leave his car to go across the street to eat.

Q. And isn't it true that he solicited your business for such items as Prestone and Exide batteries?

A. I don't ever recall.

Q. Did he call on you for a number of years and 3216 never asked you to buy anything?

A. I did buy Turtle wax from him one time.

Q. So he did solicit your business from time to time?

A. I guess you would say he did.

Q. When did you first learn that he had testified about you in this case?

A. Last winter.

Q. Well, the testimony was in June 1957, and you learned that winter he had testified about you?

A. I didn't know he testified. I heard he wrote a letter about me.

Q. And now after that—

A. And it was a surprise to me, because I had wondered why he stopped coming in to leave his car to go eat.

Q. Did you ever have any conversations with him after that time?

A. No, he has ignored me, avoided me, in fact, and avoided men of mine, and we wondered why.

Q. Was any—was this matter called to your attention by anyone, after his testimony in June '57?

A. Well, like I said, I was told he wrote a letter, I was told that last spring by our lawyers.

Q. By your lawyers, you mean lawyers for—

A. Mr. Ballard.

I didn't know he had testified.

3217 Q. Now, are you stating that you never had—let me ask you this: Have you ever had any conversations with Mr. Vick concerning your purchases of Goodyear TBA?

A. To my knowledge, I didn't. This thing here today is all new to me.

Q. This is the first time—you say that over the years—how many years have you known Mr. Vick?

A. Well, only since I think I went to Broad and Wallace.

Q. And you have been there since 19—

A. 1953.

Q. So he has been calling on you, at the time of his testimony, has been calling on you for approximately two years—or four years, is that right? And you say during

all that time you never discussed your purchases of Good-year TBA with him?

A. Absolutely not.

Q. Did you ever give as a reason for not purchasing from him the fact that you were buying primarily from Mr. Kaiser?

A. As a dealer, as a business man, we may often say "I am satisfied where I am buying, I don't want to bother with anyone else."

Q. Isn't it true what you began to say in your answer, as an Atlantic dealer you were buying from Mr. Kaiser? Is that what you told him?

A. Not necessarily, No.

3218 Q. Not necessarily, but it is possible?

A. Well, I mean Atlantic is fresh in your mind here. As an independent business man, I feel I can buy anywhere, and I think I do.

Q. Well, was an independent business man, you say you can buy anywhere, but during—your testimony appears that during the 19 years as Atlantic dealer, you followed the Atlantic TBA program down the line?

A. Why should I change? If I am satisfied with the service, price, and I am making money?

Q. Did Mr. Vick ever call your attention to the fact that his prices on Prestone polishes were lower than Mr. Kaiser's price—on any polishes? I think his testimony was as to Johnson's polishes. Do you carry those?

A. Well, Goodyear carries it, but I don't like it, I don't carry it.

Q. Did Mr. Vick ever say, did he ever indicate his prices were lower than the prices of certain chemicals in the Goodyear line?

A. Well, he might have said so. I never asked him to prove it. I couldn't say if they were or not.

Q. But if he did, you would still have purchased from Mr. Kaiser, is that right?

A. Definitely.

Mr. Kelaher: No further questions.

3219 *Redirect Examination by Mr. Fred Ballard.*

Q. Have you found, Mr. Ringenay, over the years, Mr. Kaiser's prices to be competitive with those of other TBA suppliers?

A. He over-extends himself on being competitive. All we need to do is call him and tell him that we were offered something, and he will definitely look into it.

Q. Does he meet the price then, if he finds—

A. If it is a legitimate jobber, he will meet the price, if it is not just a peddler that bought something at a fire sale, he will meet the price.

↑ Q. Do you find his delivery and service satisfactory?

A. There is none better.

Mr. Fred Ballard: I don't think I have any more questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

ALFRED GODINO was called as a witness for the respondent the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name to the reporter.

The Witness: Alfred Godino.

3220 *Direct Examination by Mr. Francis Ballard.*

Q. Will you give us your address?

A. 37 Madison Avenue, Philadelphia 27, Pennsylvania.

Q. Mr. Godwin, you presently operate a station for Sinclair, is that right?

A. Yes.

Q. Specifically, with reference to June 1952, through February 1955, did you have an Atlantic station?

A. Yes, I did.

Q. And were you a lessee in the Atlantic station?

A. Yes.

Q. Could you tell us where it was located?

A. Belmont and Jefferson Streets, Belmont Hills.

Q. That is what is also known as Manayunk?

A. West Manayunk.

Q. You left the Atlantic station in February, 1955?

A. Yes.

Q. When did you start with Sinclair?

A. June of 1957.

Q. And what did you do between February of 1955, and June of 1957?

A. I operated an Esso station at Levering Mill Road and Mill Road and Belmont Avenue, Bala-Cynwyd.

Q. Mr. Godinó, those three stations that you have  
3221 mentioned are all very close to one another?

A. Yes, they are.

Q. Within a question of blocks?

A. I would say so.

Q. Now I am going to ask you a series of questions which goes only to the time you were with Atlantic, has nothing to do with the Esso station or Sinclair station. While you were with Atlantic, in Belmont Hills there, what type of tires did you stock?

A. Goodyear tires, and Lee tires.

Q. Where did you buy the Lee tires?

A. From the Lee Company, in Bryn Mawr.

Q. The Goodyear tires you got from Ernie Miller?

A. Yes.

Q. And he was the Atlantic supply man?

A. Yes.

Q. Where did you get your batteries?

A. Well, I bought them from him, also.

Q. From Miller?

A. Yes, and some from another Goodyear distributor.

Q. What was the name of that other Goodyear distributor?

A. John Gabriel.

Q. How about the accessories, where did you get those?

A. Well, I bought accessories from Miller, and from Maxwell Auto Parts Company, and Aviation Auto Parts.

3222 Q. Pretty generally, from several houses?

A. Yes.

Q. Specifically, Mr. Godino, with reference to those Lee tires you mentioned, where did you store them?

A. On the shelf, with the rest of the tires.

Q. Were they openly displayed?

A. Yes.

Q. Did Atlantic ever criticize you about about carrying those Lee tires?

A. No.

Q. Did they ever tell you to stop buying them or to hide them?

A. No.

Q. Did they tell you to remove them from the station?

A. No.

Q. Mr. Godino, do you know an outfit called Suburban Auto Parts?

A. Yes, I know the name of the company.

Q. Do you know a fellow named George Stanley Drew Walker?

A. No, I don't, never met the man, I wouldn't know him if I saw him.

Q. You stated, sir, you do not know George Stanley Drew Walker?

A. No.

Q. He testified, in this proceeding, in June of 1957 3223 —that would be a little over 18 months ago—and he stated in his testimony that he was a salesman for this Suburban Auto Parts, and that is the concern you know?

A. (Nodding Yes.)

Q. Now, sir, I am going to read to you a question and answer from the record and this is, for the record, at page 1,034. These are questions which were put to Mr. Walker by the attorneys, and his answers.

"Question: I am asking you for a specific statement by a specific operator. Can you recall any other Atlantic operator that made this specific statement to you?"

To that question Mr. Walker answered:

"I can recall some years ago, when Al Godino was operating the station on Belmont Avenue, in Belmont

Hills, saying he couldn't buy accessories from you, even if he could get them cheaper."

And then the attorney asked him this question:

"Question: And did he tell you why he couldn't buy them from you?"

And Mr. Walker answered:

"Because he said that is his contract with Atlantic, he would have to get these accessories through their approved source."

Now, Mr. Godino, you say you do not know Mr. 3224 George Stanley Drew Walker?

A. No, I don't know him.

3225 Q. Do you know any other salesman for Suburban Auto Parts?

A. No.

Q. Did you ever make the statement which was attributed here to you to any salesman for Suburban Auto Parts?

A. No, I don't remember. It has been so long ago and so many salesmen has come in the place. I don't remember. I don't think I did. I am almost sure I didn't.

Q. Let's not worry about that as much as this question: Did you, in fact, have a contract with the Atlantic Refining Company that you would buy your accessories through the approved source?

A. Oh, no, I didn't.

Q. Were you, in fact, free to buy accessories wherever you chose?

A. Yes, I was.

Mr. Francis Ballard: That is all.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Godino, you went into the Atlantic station in June 1952 and remained there until February 1955 according to your testimony. Is that correct?

A. Yes, sir.

Q. When you went into the Atlantic station, why did you begin to purchase TBA from Ernie Miller?

A. Why did I begin?

3226 Q. Yes.

A. Well, he was our distributor.

Q. He was the Atlantic distributor?

A. That is right.

Q. And wasn't and didn't an Atlantic salesman or representative acquaint you with the fact that Mr. Miller was your supply point, that you would buy your TBA from him?

A. Well, he was our distributor and we were supposed to buy TBA off him, batteries, accessories, and things like that.

Q. And that is what you did?

A. Not all of it. I bought some outside.

Q. As I understand your testimony on direct examination, you bought tires, batteries, and accessories from Miller, is that right?

A. Yes, I did.

Q. And wasn't Mr. Miller your principal TBA supplier?

A. Yes, he was.

Q. When you went into your Atlantic station, were the Goodyear window valances already up and Goodyear outdoor signs already up in your station?

A. When I went where?

Q. Into the Atlantic station in '52.

A. Yes, they were.

Q. Now, I would like to direct your attention to Mr. Walker's testimony again. According to Mr. Walker's 3227 testimony, he called on you in the early part of 1953

when he first started on the job. Now, isn't it possible that he may have called on you at that time to solicit your business?

A. Yes, it is possible, but I don't remember.

Q. You just don't remember him. Now, isn't it true that there were many jobber salesmen who called on you while you were at the Atlantic station?

A. Yes.

Q. And you don't remember all those either, do you?

A. I remember the ones I purchased from, like Maxwell, and Aviation. I remember those people, those I did business with.

Q. But you don't remember the ones you didn't purchase from, do you?

A. They might have come there and wanted me to purchase from them, and I told them I wasn't interested or had a couple of suppliers to supply me.

Q. And the fact remains there were jobber salesmen in addition to Mr. Walker whom you don't remember?

A. There were salesmen coming in practically every day trying to sell you something.

Q. So it is entirely possible he did call on you?

A. Yes, but I don't remember.

3228 By Mr. Kelaher:

Q. Is it your testimony that you do not recall signing a contract concerning the purchase of accessories with an approved, from an approved source?

Mr. Francis Ballard: I object to the question. Once again his testimony is that he did not sign a contract with Atlantic Refining Company, that he buy accessories through the approved source.

Hearing Examiner Kolb: You can ask him whether he remembers that or not. The objection will be overruled. It is cross-examination.

The Witness: I remember signing a lease for the building. That is all.

By Mr. Kelaher:

Q. Do you remember signing a Goodyear associate dealer contract?

A. No, I don't.

Q. Now, it is entirely possible you signed such a contract, is it?

A. That is too far back for me to remember now. I don't know whether I did or not. I know I signed a lease for the service station.

Mr. Kelaher: May we have a minute until I check the record, your Honor?

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Mr. Godino, I show you Commission's Exhibit 3230 44-E, which is a Goodyear associate dealer agreement, with a space for a dealer's signature, and ask you if you recall signing any ~~such~~ agreement?

A. No, I don't. I don't recall at all.

Q. It is possible, however, you may have signed an agreement of this type?

A. I might have, but I don't remember.

Mr. Kelaher: No further questions.

Mr. Francis Ballard: Thank you sir.

(Witness excused.)

Mr. Fred Ballard: Your Honor, could we have a short recess at this time?

Hearing Examiner Kolb: Yes.

(Short recess.)

Hearing Examiner Kolb: The hearing will be in order.

ROBERT C. PROVOST was called as a witness on behalf of Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Robert C. Provost, 116 Apel Avenue, Oreland, Pennsylvania.

3231 · *Direct Examination by Mr. Fred Ballard.*

Q. Mr. Provost, you are, I believe, an Atlantic lessee; is that right?

A. Yes, sir.

Q. What is the location of service station?

A. Hunting Park and Whitaker, Philadelphia.

Q. How long have you been in that station, sir?

A. Five years, this July.

Before you went into that station, had you had any experience in operating a service station?

A. No, sir.

Q. Did you go to the Atlantic dealer training school before you went into that station?

A. Yes.

Q. In that school did they tell you that Atlantic sponsored the Goodyear brand of tires, batteries, and accessories?

A. Yes, sir.

Q. When you came out of training school, and went to this station, did your Atlantic salesman introduce you to a Goodyear supplier of TBA?

A. Yes, he did.

Q. What was his name?

A. Harvey George.

- Q. Have you bought TBA from that supplier since?
- 3232 A. Ever since then.
- Q. Do you find Mr. George's service is satisfactory?
- A. Very Good.
- Q. Prices?
- A. Very fair.
- Q. How about his credit terms?
- A. Excellent.
- Q. Have you on occasion bought TBA from other suppliers?
- A. Yes, I have.
- Q. Could you name one of them?
- A. Target Auto Supply.
- Q. Has Atlantic ever criticized you for buying TBA from other suppliers?
- A. No, sir.
- Q. Do you feel you can buy TBA wherever you want?
- A. Yes, I do.
- Q. Do you know a supplier named Philadelphia Wholesale Distributors?
- A. I know of them.
- Q. Has a salesman from that supplier ever called on you?
- A. Yes, he did.
- Q. Do you know whether the salesman's name was John J. Vick?
- A. I do not know.
- Q. Now, as I have previously told you, Mr. Vick, a salesman from that supply house, testified in these proceedings last summer. It was June 25 that he testified here. He was questioned by a lawyer representing the Federal Trade Commission, and the question was, "Do you recall any other instances?" And this is the answer Mr. Vick gave, and I am using Mr. Vick's words here: "Mr.

Bob Provost, Sr., Whitaker and Hunting Park Avenue"—that is you—he says, "I went in to offer him or solicit him DuPont anti-freeze business, and he says, 'What do you want, the roof to cave in on me. I would lose my lease immediately.' "

Now, sir, do you feel you would lost your lease if you bought DuPont anti-freeze from Philadelphia Wholesale Distributors?

A. I don't know whether I would lose my lease if I bought from Philadelphia Wholesale. However, I have been buying for about four years DuPont anti-freeze.

Q. Who have you been buying it from?

A. This year we bought it off of Auto Gear.

Q. Auto Gear and Parts; is that the full name?

A. Yes, sir.

Q. Now, Vick went on and says: "So, I asked him if he did any business with the jobbers, and he says, 'Very little'." Now, this is what Vick is quoting you as saying: "The only time I give any business to a jobber is when I am out of a certain part that Atlantic doesn't carry and I will call on a jobber'."

3234 Is that substantially your business practice?

A. No.

Q. You do give—

A. (Interposing.) Not substantially, no. If I might say, we bought our anti-freeze off Gaul-Derr & Shearer last year. We didn't even buy any off Atlantic. Atlantic was selling Prestone last year.

Mr. Fred Ballard: Will you note for the record that the testimony to which I referred is on page 713 of the record.

I have no further questions, Mr. Provost.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Provost, you began your station operation as an Atlantic lessee dealer in July 53?

A. Yes, sir.

Q. I am not clear on whether you are still a lessee dealer or not.

A. I am still a dealer, yes, sir.

Q. Now, at the time you wanted to become an Atlantic dealer, were you contacted or did you contact someone in the Atlantic organization?

A. No, I went to Atlantic Refining Company themselves, 260 South Broad Street, and asked for the outline on getting a station.

3235 Q. And then were you screened along the line by various Atlantic personnel?

A. Well, all I know is they got me a job to wait, to cover the time when the next training class would start, and I worked at an Atlantic station for about four months and then I went to dealer school.

Q. Prior to that time, or about the time—let's take it up to the training school: You were advised that Atlantic was sponsoring the Goodyear TBA line, were you not?

A. Up until the time I went to training school?

Q. In the school.

A. In the training school, yes, I think at the end of the last week they told us they were sponsoring Goodyear TBA.

Q. Now, when you moved into your station, did you move into a new station or did you replace another dealer?

A. I moved into a new station.

Q. When you moved in, did they already have the Goodyear window signs up, do you recall, or did they come later?

A. Honestly, I don't remember.

Q. They are there now, are they not?

A. I know the window trim wasn't up, because I remember I had to take the window display out after I was in. I don't know about the sign outside. I don't think it was, but I can't say for sure.

Q. They are up there now?

3236 A. Yes.

Q. And they were placed in there shortly after you arrived, if they weren't there at the time?

A. Yes, sir.

Q. When you were told that you were going to be the dealer at your station location, weren't you also told that your Goodyear TBA supply point would be Harvey George; is that correct?

A. No, I wasn't told. I was introduced and they helped me with the credit out with Harvey George. I went to see him.

Q. You were introduced by an Atlantic salesman?

A. Yes, sir.

Q. Who was he?

A. Mr. Hoffman, John Hoffman.

Q. Is he still your Atlantic salesman?

A. No.

Q. Who is your present salesman?

A. Douglas MacDonald.

Q. Now, at the time you entered the station, did you have any, make any loans from Atlantic?

A. Just temporarily, and then I made—it is an equipment contract for merchandise that was a very short time—about two weeks.

Q. You borrowed some money—

A. (Interposing.) They lent me money for one year for equipment. That was the loan. But not for TBA.

3237 After Harvey George stocked the station, there was about a two-week time of credit, straightened out after that.

Q. But your initial stock was from Harvey George of  
TBA?

A. Yes.

Q. And since that time you have purchased tires from  
Harvey George; is that correct? Goodyear tires?

A. Yes, sir.

Q. Are all of your tires purchased from Harvey  
George?

A. No, sir.

Q. Do you purchase on a fill-in basis from others?

A. We don't purchase any recap merchandise from  
Goodyear.

Q. Other than recap.

A. Strictly from Harvey George.

Q. Your new tires are from him strictly?

A. Yes.

Q. And are your batteries strictly from Harvey George?

A. Yes, sir.

Q. And your principal accessories' supplier is Harvey  
George; is that correct?

A. Chemical-wise, I would say.

Q. Do you purchase Goodyear fanbelts?

A. Yes.

Q. And other items in addition to chemicals?

A. Hoses, tires, tubes, batteries.

Q. Now, with reference to Philadelphia Wholesale  
3238-Distributors, you testified that you do recall a sales-  
man from that company calling on you?

A. Yes, I do recall the salesman.

Q. And did he give you his card or mention his name?

A. He probably did, but I don't remember the man's  
name.

Q. Could you describe him?

A. No, sir.

Q. Isn't it a fact that the salesman from Philadelphia

Wholesale Distributors solicited your DuPont anti-freeze business?

A. I don't really remember what we talked about at that time. I just don't remember. I do believe he was there, I remember some of the conversation, we discussed it with the attorney.

Q. And let's have the conversation. You say you discussed this—

A. (Interposing.) Something about blowing the roof off the place, because that is about all I remember, because that is pretty well a stock answer of mine.

Q. So you did make that statement to him?

A. I probably did say that to him.

Q. You probably did say to him, "What do you want, the roof to cave in on me?"

A. I probably did.

Q. And "I would lose my lease immediately"?

A. I don't know whether I said that.

3239 Q. But you could have?

A. I don't think I said that. I might have had a bad day and wanted to get rid of him, but I don't think I did.

Q. Apparently you have said it on occasions?

A. No, sir.

Q. Didn't he also offer you a Johnson's polish at a price \$4.00 per case lower than the price of Harvey George? Do you recall that?

A. I don't remember.

Q. And isn't it also true, from your testimony, that your principal TBA supplier is Harvey George?

A. Absolutely,

Mr. Kelaher: No further questions.

*Recross Examination by Mr. Fred Ballard.*

Q. On occasion has Harvey George extended credit to you?

A. The first year I was in business I got in a little hot water, lost a lot of money, and he sure did, he helped me over the winter.

Q. Would you mind giving the amount he extended at that time?

A. It was roughly in the neighborhood of about \$1200 at that time. It must have been the following January, after I started. I had chains, snow tires, and things like that I had not moved out, and he said, "Don't worry about them, keep them and try to move them, and if you do, okay, and if you don't, okay, too."

Mr. Fred Ballard: I have no further questions.

Mr. Kelaher: Nothing further.

Hearing Examiner Kolb: That is all.

(Witness excused.)

3241 DONALD ELKO was called as a witness on behalf of the respondent the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Will you give the reporter your name and address.

The Witness: Donald Elko, 1133 String Street, Sharon Hill.

*Direct Examination by Mr. Francis Ballard.*

Q. Mr. Elko, you are an Atlantic lessee?

A. Right.

Q. Could you tell the Examiner where your station is?

A. It is at Chester Pike and Clifton Avenue, Sharon Hill.

Q. When did you go into that station?

A. January 21, 1956.

Q. '56 or '57?

A. '57, I am sorry.

Q. Am I right in saying that is the only station that you have operated, as a lessee for Atlantic?

A. Yes, sir.

Q. You have worked in other stations before as an employee?

A. Yes, sir.

Q. Before you went into that station, or when you 3242 took it over, did you go up to a training school with Atlantic Refining?

A. Yes.

Q. How long was that school?

A. Five weeks.

Q. And actually I think it is true that when you were in the school, you were also in the station?

A. Yes.

Q. Now, did anybody from Atlantic suggest to you that Ed Paris was the Goodyear distributor in your area?

A. I already knew that before I took the station. He is a cousin of mine.

Q. And had you worked as an employee in this very same station you now have?

A. Yes, the fellow that had it just before I took over.

Q. Ed Paris is your source of TBA?

A. Yes, sir.

Q. How is he on price?

A. As good as the others.

Q. How about his credit?

A. Very good.

Q. Mr. Elko, can we stop there for a moment—don't

answer this question unless you choose to—but you have had a good deal of credit from Mr. Paris?

A. Very good, large sum.

3243 Q. It was quite a large sum?

A. Quite a few thousand dollars.

Q. How about Mr. Paris' service?

A. Very good.

Q. His delivery?

A. Very good.

Q. You are happy with him?

A. Yes, sir.

Mr. Kelaher: Your Honor, I am going to permit this cross-examination to go on, but I think when we get along a little further, I will start objecting.

Hearing Examiner Kolb: Try not to lead the witness too much.

Mr. Francis Ballard: All right, sir.

By Mr. Francis Ballard:

Q. Do you, or do you not, buy tires, batteries, and accessories, from persons other than Mr. Paris?

A. I have bought, yes.

Q. Could you name the companies from whom you have bought, or company, and the products which you bought from them?

A. I bought some batteries off V. J. Auto Parts. I bought tires off Albert Tire Company, Harrison Leonard, in Chester, Paris, in Chester Motor Parts, Prospect Park.

Q. Well, motor parts we are not keeping them in this.

A. You are speaking of tires and batteries?

3244 Q. Yes, tires, batteries and accessories. Are those purchases which you have just told us about of tires and batteries, are they for stock or just to supply a specific order from a customer?

A. Mostly orders.

Q. Do you or do you not buy Bardahl?

A. I buy Bardahl, yes.

Q. Who do you buy that from?

A. Off the Bardahl man himself.

Q. Do you or do you not buy Bars Leak?

A. Yes.

Q. I want to pause for a moment on that Bars Leak.  
Do you have any Bars Leak in your station now?

A. Yes, it is on the shelf.

Q. Has anybody from the Atlantic organization ever told you to take it off the shelf?

A. No, never.

Q. How about the Bardahl, where is that?

A. Right on the shelf and I have it on the stand out front.

Q. That is an outdoor rack, you mean?

A. Yes.

Mr. Kelaher: Mr. Examiner, I think at one of our earlier hearings, counsel for Atlantic raised objection to questions concerning Bardahl, stating it was not a TBA product. I would like to call that to counsel's attention.

3245 Mr. Fred Ballard: Your Honor, we have had this discussion a number of times, and as I understand it, the fact is that Bardahl is an oil additive, and I think there is no comparable item in the Goodyear sponsored line, I believe it would unhesitatingly be classified by any dealer as a TBA product.

Mr. Kelaher: All I know is I wasn't able to ask any questions about it.

Hearing Examiner Kolb: Well, there is no comparable product in the Goodyear line.

Mr. Fred Ballard: I believe that is true, your Honor. I will refer to any Goodyear colleagues on that point.

Mr. Ingraham: I believe that is true.

By Mr. Francis Ballard:

Q. Mr. Elko, leaving Bardahl, as a result of this interchange, completely out of the discussion, have you ever been criticized by anybody from Atlantic for carrying non-sponsored, non-Goodyear TBA?

A. No.

Q. Have you ever been told to stop buying?

A. No.

Q. Ever been told to get it out of the station, or to hide it?

A. Never.

3246 Q. I think you mentioned earlier in your testimony, Mr. Elko, the firm of Harris and Leonard. Is that right?

A. Yes.

Q. Have you ever made any purchases from Harris and Leonard?

A. Yes, I have.

Q. What of?

A. Mostly recapped tires.

Q. Do you still buy recap tires from Harris and Leonard?

A. Yes. I have some on stock now from them.

Q. Have you or have you not bought any batteries from Harris and Leonard?

A. No, I never have, they never approached me on it.

Q. You say they never approached you for batteries?

A. No.

Q. Have they ever approached you for the sale of new tires?

A. No.

Q. Do you know a gentleman named Joseph Marabella?

A. Yes.

Q. He is connected with V. J. Auto Parts, is that right?

A. Yes.

Q. Do you buy from V. J. Auto Parts?

A. Yes, I do.

Q. What do you buy from V. J.?

3247 A. I buy repair work, brakes, drums, wheel cylinders, volume tank regulators.

Q. Do you buy any Bars Leak from V. J. Auto?

A. Bars Leak, windshield wipers.

Q. Now you said you knew Mr. Marabella. Does he call on your station?

A. He has a salesman, he calls on me.

Q. Not Mr. Marabella?

A. No, he has called twice, when the salesman was on vacation.

Q. How often does the salesman call?

A. Once a week.

Q. You say Mr. Marabella called on you twice?

A. Yes.

Q. Mr. Elko, Mr. Marabella testified in this case at page 931 of the record, and what I am going to do now is read you what he said, and then ask you a couple of questions about it. In earlier questions and answers your name had come up, and at page 931 Mr. Marabella said:

“Very frankly, on that particular account”—referring to you—“It is covered by our other salesman, but I myself had a personal contact, personal solicitation, on TBA items, namely Delco batteries, in January of 1957. That took place in Don Elko’s station. I solicited 3248 along with the Deleo battery man his battery business, and he just through up his hands, he said ‘Joe, I would like to buy the batteries from you, but you know what I have been running into and what every other Atlantic man has been running into, I cannot put anything but a Goodyear battery in this place. If I don’t have a battery, I would be more than glad to buy it from you, because I know you can give me the service and the price is right.’”

Do you recall that conversation?

A. No.

Q. Have you had any conversations with Mr. Marabella concerning Delco batteries?

A. No, never.

Q. Has he come to your station in company with a representative of the Delco Company?

A. No, never.

Q. And you say Mr. Marabella has only been in your station twice?

A. Yes.

Q. Mr. Elko, do you feel free, if you choose to, to put Delco batteries in your station?

A. Yes.

Mr. Frances Ballard: No further questions.

3249      *Cross-Examination by Mr. Kelaher.*

Q. Mr. Elko, you stated you worked as an employee in an Atlantic station, prior to becoming an Atlantic lessee dealer. Where did you work and for how long?

A. I worked in two stations. Firstly, I worked at Johnny Franca's station, on McDad Boulevard and Collingdale Avenue, in Collingdale. I worked part-time there for about a year; off and on, with Johnny.

Q. Beginning when?

A. Well—

Q. Was it just prior to the time—

A. No, when I first came out of the service, about 1954, to about 1955. Somewhere in April, I would say, I started with him. I had just come out of the service.

Q. Then after that did you work as an attendant at that station?

A. Yes.

Q. Then did you go to another Atlantic station?

A. I went to a Gulf station first, and then over to another Atlantic.

Q. What was the name of the second Atlantic station that you want to?

A. Jack Farragher.

Q. How long were you at that station?

3250 A. Eight months.

Q. Was that immediately prior to the time you became a dealer?

A. Yes.

Q. And you moved—your present station location is at Chester Pike and Clifton Avenue, Sharon Hill?

A. That is the station I worked at with Jack Farragher, that address.

Q. Did Mr. Farragher—you succeeded him as the lessee dealer there?

A. Yes.

Q. Prior to Mr. Farragher, weren't there several other Atlantic dealers who had had that station?

A. Yes.

Q. Would you name some of those?

A. Fred Crumb, Chambers, Powers.

Q. So there were four dealers in that station, including yourself, in a period of four or five years, would you say?

A. Yes.

Q. Now because of your relationship, as a cousin to Mr. Parris, and because of your employment by Atlantic, you were well aware that Mr. Parris was supplying all of the Atlantic stations with Goodyear TBA, in that area; isn't that right?

A. Yes.

3251 Q. So that when you became a lessee dealer, in Sharon Hill, you knew that you would automatically begin to purchase your TBA from Mr. Parris, didn't you?

A. Yes.

Q. When you went into your Atlantic station, were the Goodyear window valances up at that time?

A. Yes.

Q. Was the Goodyear outdoor pole sign up at that time?

A. Yes.

Q. And was your initial stocking order sent in by Mr. Parris? Did you contact Mr. Parris or did he contact you, or how did the Atlantic salesman arrange to have—

Mr. Francis Ballard: Your Honor, I think there are three questions that have just been asked.

Mr. Kelaher: I am attempting to clarify a question.

Mr. Francis Ballard: Question by question would help the witness, I think. Could we have a ruling on the form of that question?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Kelaher: (Continuing.) —your initial stocking order get into the station?

Hearing Examiner Kolb: The objection will be overruled.

3252 By Mr. Kelaher:

Q. Or did you simply just—let me ask it this way: Was the station already stocked with TBA when you went in as a lessee dealer?

A. Yes, it was stocked.

Q. And it was stocked with Goodyear TBA, wasn't it?

A. Yes. There was other things, other than Goodyear TBA in there.

Q. But the principal stock was—

A. The principal stock, yes.

Q. When you went into the station, did you have a loan from Atlantic?

A. Yes.

Q. How much was that?

A. \$3,000.

Q. Was part of that loan used for purchasing TBA, Goodyear TBA?

A. No.

Q. None of it?

A. (Nodding No.) I am sorry, I think I misunderstood you.

Q. Was any of the \$3,000 used by you to purchase Goodyear TBA?

A. No, that was already, it was stock in the station.

Q. Would you clarify that?

A. It was used against the stock in the station.

Q. In other words, there was a certain amount, a 3253 certain dollars worth of stock in the station and this was applied against it?

A. Yes.

Q. Was the whole \$3,000 applied against stock in the station?

A. Stock, yes.

Q. Goodyear TBA stock?

A. Gasoline, do you consider that stock?

Q. Yes.

A. Yes.

Q. As a result of that loan of \$3,000, did you feel you had an obligation to purchase Goodyear TBA from Mr. Parris?

A. No, I had no obligation to Mr. Parris.

Q. Did you feel that as long as Atlantic had played ball with you, you would purchase Goodyear TBA from Mr. Parris?

A. Goodyear TBA is a top brand name and I would be a fool not to buy anything else but top brand.

Q. And the fact that Atlantic sponsors it, you say, does not influence your decision to handle Goodyear TBA?

A. I have other merchandise—

Q. I am asking this specific question about Goodyear TBA.

A. I don't believe it influenced me any.

Q. You don't think it has any influence whatsoever?

A. No.

Q. Now, Mr. Marabella testified, and you have 3254 substantiated his testimony, to the effect that another salesman from his company calls on you principally?

A. Yes, sir.

Q. Now, Mr. Marabella did call on you, did he not?

A. He called on me twice.

Q. And on one of those occasions—did he call on you when you opened your station, in January 1957?

A. No.

Q. Beg your pardon?

A. No.

Q. Did he call on you shortly after that?

A. Well, it was in the summer, when the salesman was on vacation.

Q. Was that the first time?

A. Yes.

Q. Did he solicit Delco batteries or any other business at that time?

A. Not Delco. I might have given him an order for other things.

Q. I am asking you if he solicited your business on Delco batteries or any other products?

A. No.

Q. At that time was he—he was handling Delco batteries, was he not?

A. I believe so.

3255 Q. And you say he didn't ask you to purchase Delco batteries?

A. No.

Q. Has the other salesman for V. J. Auto Parts ever asked you to purchase Delco batteries?

A. He asked me when I needed any, to consider him and I have bought some batteries off him.

Q. Have those purchases been on a fill-in basis only?

A. Yes, sir.

Q. All of your batteries are purchased from Mr. Parris, are they not?

A. Yes.

Q. And that is the Goodyear battery?

A. Yes.

Q. Now let's talk about Bars Leak for a minute. You say you do purchase Bars Leak from V. J. Auto Parts?

A. Yes.

Q. And Mr. Marabella so testified you do. Who was your Atlantic salesman beginning in January 1957, when you went into the station?

A. Joe Snyder.

Q. Has he been your only Atlantic salesman?

A. Yes.

Q. And you recall no Atlantic salesman asking you to remove Bars Leak from your shelves, is that right?

A. No.

3256 Q. Is it possible they may have made a comment to that effect?

A. No.

Q. When did you first learn that Mr. Marabella had testified concerning this conversation with you, or purported conversation with you?

A. The first meeting.

Q. When?

A. The first hearing.

Q. Were you advised by counsel for Atlantic or did you learn from some other source?

A. Through Atlantic.

Q. Did you resent him naming you in his testimony?

A. No.

Mr. Kelaher: No further questions.

*Redirect Examination by Mr. Francis Ballard.*

Q. Mr. Elko, I want to straighten out one thing. On cross-examination Mr. Kelaher asked you some questions about TBA stock, when you took over your station in January 1957. Did I understand you to say that there was some non-Goodyear items in that stock?

A. Yes, there was.

Q. And the station was not newly erected, was it?

A. No.

3257 Q. Did you buy the TBA that was in the station?

A. Yes.

Q. And from whom did you buy it?

A. From Jack Farragher.

Q. That is the fellow, he was the dealer whom you succeeded!

A. Yes.

Q. You bought all of his TBA stock?

A. Yes.

Q. Which included non-Goodyear TBA?

A. Yes.

Mr. Francis Ballard: Thank you.

*Recross Examination by Mr. Kelaher.*

Q. When you say he had some non-Goodyear stock, are you referring to Bardahl, for example?

A. No, he didn't carry Bardahl.

Q. Are you referring to antifreeze, for example?

A. There was Bars Leak, some tubes, tire patch repair kits, that were not TBA, I know there was a lot of stock that was other—

Q. Wasn't the principal stock Goodyear TBA, tires batteries and accessories, right?

A. Yes.

Mr. Kelaher: No further questions.

(Witness excused.)

3258 Hearing Examiner Kolb: We will take a short recess.

(Whereupon, a short recess was taken.)

Hearing Examiner Kolb: Come to order.

ISADORE MANN was called as a witness on behalf of Respondent Atlantic, and having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Isadore Mann. My home address is 1305 Kimberly, Philadelphia, 31.

*Direct Examination by Mr. Fred Ballard.*

Q. Mr. Mann, you are a lessee of an Atlantic service station, is that right?

A. I am.

Q. What is the address of your station?

A. Haverford Avenue and Brookhaven Road.

Q. Do you remember when you first leased that station?

A. When I first leased it?

Q. Yes.

A. Two days before Christmas I knew I was getting it. I opened it up March 17, 1949 that was.

Q. 1949 or 1950, sir?

A. 1949 is when I knew I was getting it and in 3259 1950, March 17, I opened it up.

Q. Now when you opened that station, was that a new station, sir?

A. Yes, sir.

Q. Who did you buy your—such tires, batteries and accessories as you did buy, who did you buy them from?

A. Frank Hagen.

Q. Had you previously known Mr. Hagen?

A. I knew Hagen, I used to work for an employer at 55th and Buist Avenue, and Frank was a short distance away, and I stopped there several times and I knew him as a friend.

Q. Did your Atlantic salesman also tell you that Hagen was a supplier for Atlantic stations?

A. That is right.

Q. Now at that time I believe Hagen was carrying Lee tires and Exide batteries, is that right?

A. Yes.

Q. Did Hagen subsequently change to another brand?

A. Hagen switched to Goodyear and we naturally went to Goodyear.

Q. Have you found that Goodyear tires are easier to sell than Lee tires?

A. Goodyear is the leader in the field, yes, it is a lot easier to sell.

Q. Do you still carry some Lee tires?

3260 A. Yes.

Q. Where do you buy those?

A. 22nd and Race, Lee Tire Company.

Q. That is a store, apparently, a factory branch?

A. Yes.

Q. Do you buy your batteries from Hagen?

A. I buy batteries from Hagen and I also buy Delco batteries from Genuine Auto Parts.

Q. Your accessories, do you buy those from Hagen?

A. I buy accessories from Hagen; also from the outside.

Q. Are your Lee tires visible in your station today?

A. Yes, sir.

Q. Does your Atlantic salesman know you have them?

A. Yes.

Q. Has he ever told you to remove them from the station?

A. At no time was I ever told to remove anything from the station.

Q. Has he ever told you to stop buying them?

A. No, sir. In fact, I have had three salesmen since I opened, and none ever told me.

Q. At any time have you hidden your Lee tires from your Atlantic salesman?

A. No.

Q. Do you know a supplier called Lancaster Auto Supply?

A. I do. I used to buy from them.

3261 Q. Are you acquainted with a salesman for that supplier named Meyer Duboff?

A. I am.

Q. I believe you also know that on June 24, 1957, Mr. Duboff testified in these same proceedings. His testimony is reported, as far as I am reading, beginning on page 507 of the record. In these proceedings Mr. Duboff was asked whether at any time he had been able to sell any of the Atlantic stations and he, after answering that question, was then asked: "When was the last time you were able to sell them?"

His answer was: "It is getting tougher and tougher to sell them to tell the truth. I would say within the last couple of years it is getting worse."

"Question: Do you continue to solicit their business?

"Answer: I try to, but it is like barking up a tree. You can't do anything with these fellows. They must buy the company and that is the answers I get."

Then the next question was: "Can you state specifically the name of the Atlantic dealer that told you that?"

And Mr. Duboff then said: "I. Mann, at Brookhaven and Haverford Road."

That would be you?

A. That is right.

Q. Do you recall ever saying to Mr. Duboff that you must buy from the company?

3262 A. I did not.

Q. Now beginning at page 515 of the record, Mr. Duboff was asked this question:

"You mentioned one person, Mr. I. Mann, Haverford and Brookhaven Road?"

And his answer was: "That is right."

Then the question was: "As having said something to you about inability to buy from you. I am not clear as to what he said."

And Mr. Duboff answered, "Do you want me to state what he said to me? He said to me 'I can't buy from you'."

Did you ever say that to him?

A. I did not. I bought from Mike—I call him Mike—I bought quite a few things from Mike. I bought equipment, I bought Prestone, I bought a lot of things off him. But then I got to doing business with Genuine Auto Parts, who is closer, and the thing is, after all, you can't just give everybody business, so I stopped doing business with Lancaster, which is his company.

3263      *Cross-Examination by Mr. Kelaher.*

Q. Mr. Mann, your station was a new station when you opened, as I understand your testimony?

A. That is right.

Q. Now at that time that you began to purchase Lee tires, Exide batteries, and a line of accessories from Mr. Frank Hagan, is that correct?

A. That is right, sir.

Q. And at that time Atlantic was sponsoring those brands, isn't that right?

A. That is right.

Q. And Mr. Hagan was the supply point for Atlantic dealers in your area?

A. That is right.

Q. And that was why you purchased from Mr. Hagan, wasn't it?

A. Yes, sir.

Q. Now the switch, or change-over to Goodyear, according to this record, came in or about March 1951. Now at that time, according to your testimony, Mr. Hagan began to carry Goodyear TBA instead of Lee tires, Exide batteries, and accessories, is that correct?

A. That is right, sir.

Q. And at that time you began to purchase Goodyear TBA from Mr. Hagan, is that right?

3264 A. That is right.

Q. Now at that time, or prior to that time, was your service station identified with Lee signs and Exide signs?

A. Yes.

Q. And shortly after the change-over or in or about the time of the change-over, were those signs changed to Goodyear signs?

A. Right after that they were changed to Goodyear signs. Well, in buying Goodyear tires, naturally we use more Goodyear tires—rather, the Goodyear tire sells faster than Lee tires, and naturally I think the dealers were tickled to death to go along with it, because I know from that time to this time the amount of tires I sell has increased because of that, but I still sell Lee tires.

Q. Now you stated just now and earlier in your direct

examination that Goodyear tires are easier to sell than Lee tires, right?

A. That is right.

Q. If that was the case, why did you carry Lee tires as your principal stock of tires from 1950, when you opened the station, until 1951?

A. I didn't just carry Lee tires.

Q. You stocked Lee tires, did you not?

A. We started with Lee, the company, through Frank Hagan, and we naturally purchased Lee tires and accessories, but I still sell all kinds of tires. I don't limit myself to two tires. I sell whatever the customer wants. I can get them, and do stock them.

Q. But you testified up to this point that when you opened your station in 1950, you stocked Lee tires, primarily?

A. That is right.

Q. Right?

A. Not all Lee tires, no. You misunderstood. Not complete. I stocked Lee tires, but I still bought other tires also.

Q. Well, you bought other tires on a fill-in basis or when a customer wanted them?

A. Fair enough. Right.

Q. Well, if Lee tires were more difficult to sell than Goodyear tires, why did you continue to stock Lee tires for two years?

A. Well, it is like anything else. You don't always do things right away. As a new dealer in the business, just one of the things. I guess you need a push once in a while to go ahead.

Q. Isn't it a fact that the reason you carried and stocked Lee tires was because Atlantic sponsored Lee tires during that period?

A. I sold Lee tires because the company sponsored them, yes.

Q. And that is the reason you didn't stock Goodyear at that time?

A. When I stocked Goodyear, it was just a few of them, I will say that.

3266 Q. When Atlantic changed over to Goodyear, you changed to Goodyear, right?

A. Yes, sir. I still say this, that I kept a good stock, I keep a good stock of Lee tires, when I changed to Goodyear, too.

Q. But your principal stock is Goodyear?

A. I would say right now if you went to my place between where I stock them and in the place and all, I would say about 60-40.

Q. In favor of Goodyear?

A. Yes. Well, they are the largest selling tire, Goodyear.

3267 Q. Now, you mentioned you have had three salesmen in your territory. What were their names?

A. Thomas Jenner—no, I am wrong. Actually I should say, well, I started—it is four salesmen, but the first one was only with me about two weeks, but if you want his name, I can pass on. Bill, William Way, Thomas Jenner, Joseph Snyder, and Stephen—

Q. (Interposing.) Pétrison?

A. Yes.

Q. Is he your present salesman?

A. Yes. See, they changed salesmen at the beginning of the year. As I told you, two days before Christmas is when I found I was getting the station, and at New Year's Mr. Way went out, went to another territory, and Mr. Jenner took over.

Q. Now, Mr. Duboff of Lancaster Auto Supply Company has called on you for some years, has he not?

A. From the beginning, yes.

Q. From the time you opened the station in 1950?

A. I went in there and bought equipment off him, like jacks, vacuum cleaner, all different kinds of equipment.

Q. Primarily equipment?

A. Yes.

Q. And at one time didn't you buy Exide batteries from him?

A. I never bought Exide batteries from Mike.

3268 Q. Did you buy an Exide battery on a fill-in basis from him?

A. You are right, one fill-in, one I couldn't get, a Group Three, which is a big truck battery.

Q. And you have purchased no Exide batteries from him since that time?

A. No, I actually don't do any business with him anymore.

Q. Did you ever have any conversations with Mr. Duboff concerning your purchases of Goodyear TBA from Mr. Hagan?

A. No, I did not.

Q. Are you—have you ever had conversations with any jobber salesman who has come into your station concerning the fact that you purchased Goodyear TBA from Mr. Hagan?

A. No, I bought some of—if you want to call it Goodyear TBA, I bought it from other sources besides Mr. Hagan.

Q. I am not asking you that. I asked you if you ever had any conversations with Mr. Duboff or any other jobber salesman concerning your reasons why you would not purchase their TBA?

A. No.

Q. Have you ever given a reason to a jobber salesman as to why you would not purchase the TBA they were selling?

A. No. I am a very busy man. I try to give a salesman a little time, courtesy, but I don't have much time to talk

about anything that doesn't pertain to my business, or for my business.

3269 Q. Do you just say, "I don't want to buy from you," or don't you give any reason at all as to why you won't buy some TBA?

A. No, my main reason, and I think I said it before, is that you just can't go giving everybody business; the first thing, nobody gets nothing, and your account isn't worth anything. Make checks out at the end of the month for \$10.00 here or \$15.00 here—that isn't worth while to break it up like that.

Q. Did you at the time you opened your station receive a loan from Atlantic Refining Company?

A. No, sir.

Q. Did you make a substantial investment in your station?

A. I certainly did.

Q. Do you feel it is to your advantage to go along with Atlantic as to the TBA line they sponsor?

A. I personally have nothing against Atlantic in buying from them. I am treated right. I have no trouble.

Q. And isn't it a fact that there is less friction when you do buy the sponsored TBA than the non-sponsored TBA?

A. I never had any friction. I don't know about anybody else. I never had any.

Q. That is because you have been buying the sponsored TBA line since you went in?

A. No, I have a lot of things on my shelf that 3270 doesn't come through Atlantic. If you went there, you would see right now at least eight different items on my shelf that doesn't come through Atlantic TBA and it is items that could be bought from Atlantic, in a different name and different brand, like Wynne products, Stuart products.

Q. What is Wynne's?

A. That is oil. Different kinds of oil—tune-up oils,

carburetor additives, valve oil. DuPont, which is Atlantic TBA, has MOA, and Wynne has their own. There is at least six or seven I am sure.

Q. But your principal accessories and batteries and tires you purchase from Mr. Hagan; is that correct?

A. I would say about 60 percent.

Q. It is more than that on batteries, is it not?

A. On batteries, it is more, you are right. I would say about 90 percent.

Q. And on accessories, it is more than 60 percent?

A. Well, about 75 percent.

Q. Now, do you recall signing a Goodyear associate dealer contract at the time of the change-over to Goodyear TBA?

A. To be truthful, I don't remember.

3271 By Mr. Kelaher:

Q. Mr. Mann, I show you Commission's Exhibit 44-E, and ask you if you recall signing this type of a document, associate dealer agreement.

A. I don't recall, sir. I definitely don't recall. That is quite a few years ago.

3272 Q. And you don't maintain your records or files back to 1951?

A. No, I definitely don't recall that.

Mr. Kelaher: Your Honor, the witness does not recall signing Exhibit 44-E, but I would like the record to show that Exhibit 160-A and -I-

Hearing Examiner Kolb (interposing): The record already shows that. There is no occasion to bring it up in connection with this testimony.

Mr. Kelaher: I think in connection with this witness' testimony for purposes of the record—

Hearing Examiner Kolb (interposing): He doesn't recall he signed it.

Mr. Kelaher: I withdraw the remarks with respect to Commission's Exhibit 160-A; no further questions.

Hearing Examiner Kolb: Thank you.

(Witness excused.)

Mr. Fred Ballard: Before we call the next witness, I don't know if I am going to shed any light on this additive business or not, but I am advised that the word "additive" is a word of many meanings, that according to Commission's Exhibit 246, the Goodyear Catalog does include something called Pyroil, which is considered to be an additive. I am also informed that it includes an item named Casite, which is described as an additive. I think it is 3273 fair to say that—I don't know whether Bardahl is competitive with those items or not. I do know that Atlantic Refining Company feels that Bardahl is not necessary for use with Atlantic motor oils.

I can get more information on this, if your Honor please, but I am confused on it myself.

Mr. Kelaher: The point I was making was that we were foreclosed from going into something on Bardahl. If they have no objection to reinstating any testimony concerning the matter, which we put in in our direct testimony, if that is the situation—

Hearing Examiner Kolb: You couldn't very well reinstate without recalling the witness.

Mr. Kelaher: I think there was certain testimony concerning Bardahl oil, and there was much objection, and as a result of very vigorous objections, we were forced to discontinue any further examination concerning that product. It would seem a little irregular to me to permit them to come in now with evidence as to a particular product, as to which they raised such vigorous objections during the course of our direct testimony.

Mr. Mason: Do you have the transcript reference?

Mr. Fred Ballard: Sir, it is not our intention to press evidence with regard to Bardahl. The Atlantic dealers recognize that Bardahl is not an Atlantic-sponsored or recommended product, and when asked about non-3274 recommended and sponsored products, they are apt to mention Bardahl, and were not trying to press the point, I can assure you. I don't know whether it is in the case or out of the case. I am sure I don't know whether my predecessor had a better idea than I do.

Mr. Kelaher: I was asked to find a reference to it in the testimony. I don't think I should take time now, but I will be glad to do so during the lunch hour.

Hearing Examiner Kolb: Let's proceed.

RUDOLPH N. LUONGO, was called as a witness on behalf of Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Rudolph N. Luongo; 931 North Avenue, Springfield, Pennsylvania.

*Direct Examination by Mr. Francis Ballard.*

Q. Mr. Luongo, you are an Atlantic lessee dealer?

A. Yes, sir.

Q. Where is your station?

A. City Line and Golf Road.

Q. That is out in what area?

3275 A. Wynnefield.

Q. When did you move into that station, Mr. Luongo?

A. December 19 or 21, something like that, last year.

Q. 1957?

A. Yes.

Q. Am I right that you had a station at 55th and Walnut Streets, prior to that time?

A. Yes, sir.

Q. And do you recall the month and year you moved into 55th and Walnut?

A. August 17, '53 or '52.

Q. '53 is the figure I have.

A. Somewhere around there.

Q. And those are the two stations that you have operated for Atlantic as a lessee?

A. Yes, sir.

Q. When you went into that station at 55th and Walnut, did you notice Mr. Hagan, the Goodyear supplier?

A. Personally, did I notice him personally?

Q. Either personally, or any other way.

A. I knew he had a station somewhere, and he was a distributor; that is all.

Q. Did you go to any training school of Atlantic before you went into that station at 55th and Walnut?

A. No, sir.

3276 Q. Did an Atlantic representative identify Hagan as a Goodyear distributor in your area?

A. Yes, sir.

Q. Now, on TBA, Mr. Luongo, who do you buy most of your TBA from now?

A. Frank Hagan.

Q. Why?

A. Well, I get a fair deal with Frank, he extends me credit, gives me good service. I don't know any reason why I shouldn't.

Q. Is he a good friend of yours now?

A. Yes.

Q. Does he have an employee named Duffy?

A. Yes, sir.

Q. What does Duffy do for you?

A. He comes in and checks my stock and anything I need he fills me in with. He doesn't bother to take up my time to tell him what I need. We have arrangements where he fills my stock up to what I should have and it has been working out very well.

Q. You like that arrangement?

A. Yes, sir.

Q. Mr. Luongo, do you buy any other tires, batteries, and accessories from sources other than Mr. Hagan?

A. On occasion, yes.

3277 Q. What companies?

A. Albert Tire, I have purchased tires from.

Q. Do you buy anything from Rotzell Company?

A. Yes, I do, things like anti-freeze, points, mufflers, tail pipes, I can't think of anything else. Quite a line of stuff.

Q. Do you or do you not carry Bars Leak?

A. Yes, sir.

3278 Q. Who do you get that from?

A. Usually from Rotzell.

Q. Bars Leak, for instance, is that openly displayed in your station?

A. Yes, sir, it is on the shelves in the show room.

Q. Is it readily visible to anybody who walks in?

A. Yes, sir.

Q. Have you ever had any criticism from Atlantic for carrying Bars Leak or any other non-Goodyear TBA?

A. No, sir.

Q. Did they ever tell you to stop buying it?

A. No, sir.

Q. Ever tell you to get it out of the station?

A. No, sir.

Q. Or to hide it?

A. No, sir.

Q. Mr. Luongo, in the spring of 1956, where was your station?

A. 55th and Walnut.

Q. Do you know a man named Edward C. Heller?

A. Yes, sir.

Q. Mr. Heller testified—who does Heller work for?

A. Rotzell.

Q. Mr. Heller testified in these proceedings that he was unable to identify the dealer that he spoke about, but he was able to say it was the dealer who was at 55th and 3279 Walnut, in the spring of 1956 and he was also able to say that Mr. Joseph Snyder was the Atlantic salesman for that dealer. Now, sir, again, you were the dealer at 55th and Walnut in the spring of 1956?

A. Yes, sir.

Q. Was Mr. Snyder your salesman at that time?

A. Yes, sir.

Q. I am going to read from page 463 of the record. This is testimony by Mr. Heller. He said:

"Well, a year or so ago we had the DuPont Chemical representative with us, and we were the first ones to have him in the City of Philadelphia. I sold a couple of the Atlantic dealers, fellows I had known, and I ran into an Atlantic salesman later on, and after that, I had no more sales of the DuPont chemicals. As one dealer told me"—and he subsequently identifies this dealer as the fellow at 55th and Walnut in the spring of 1956—

Mr. Kelaher: I wonder if we could have—this has been going on all morning. When they read from the record, there are a lot of interpolations.

Hearing Examiner Kolb: You have the record there. Do you question the statement?

Mr. Kelaher: I question the interpolation at that stage.

Mr. Francis Ballard: Mr. Kelaher, would you 3280 stipulate with me that Mr. Luongo—

Mr. Kelaher: Why don't you finish the sentence and then explain it.

Mr. Francis Ballard: I will have to start all over again.

Mr. Kelaher: Go ahead. I withdraw all objections.

By Mr. Francis Ballard:

Q. I am reading the testimony: "As one dealer told me, he was to save it for the Atlantic salesman the next time he came around". You were the Atlantic dealer at 55th and Walnut in the spring of 1956. Do you know Mr. Heller?

A. Yes.

Q. Did you tell Mr. Heller that you had to save a DuPont chemical deal for the Atlantic salesman the next time he came around?

A. No, sir.

Q. Have you ever given an order to Mr. Heller?

A. Yes.

Q. Does he call on you to this day?

A. Yes, sir.

Q. Have you ever purchased any Motor Zoom from Mr. Heller?

A. Yes, sir.

Q. This is a new product, Mr. Luongo. Would you tell us what Motor Zoom is?

A. It is a product added to the oil to prevent smoking and burning, excessive oil burning.

Mr. Kelaher: Is that what is known as an oil additive?

Mr. Francis Ballard: You will have to ask the witness.

The Witness: I think it would be classed as one.

By Mr. Francis Ballard:

Q. Now, as a matter of fact, Mr. Luongo, when DuPont, for instance, has a promotion, who do you buy it from?

A. Frank Hagan, usually.

Q. You do save it for Hagan?

A. I don't know I save it for him. I generally do buy from Hagan.

Q. Has anybody in the Atlantic organization told you you had to have these deals for Hagan?

A. No, sir.

Mr. Francis Ballard: That is all.

*Cross-Examination by Mr. Kelaher.*

Q. As I understand your testimony, you became an Atlantic dealer in August 1953, correct?

A. Yes, sir.

Q. Who was your Atlantic salesman at that time?

A. Joe Snyder.

Q. Is he still your Atlantic salesman?

3282 A. No, sir.

Q. Who is your present salesman?

A. Harry Fisher.

Q. Isn't it a fact that—I believe you so testified—that Mr. Snyder identified Mr. Hagan as the Atlantic supply point for your Goodyear TBA, when you took the station over? Isn't that right?

A. I guess it was Joe Snyder. I can't recall that far back.

Q. Whoever the Atlantic salesman was, would have told you that?

A. I would assume so, yes.

Q. And was your station a new station or did you replace a dealer?

A. I replaced a dealer.

Mr. Francis Ballard: Could you identify which station you are talking about?

Mr. Kelaher: I was talking about the station you started operating first, August 1953.

The Witness: That is 55th and Walnut. I replaced a dealer there; yes, sir.

By Mr. Kelaher:

Q. Then at your present station, did you also replace a dealer?

A. No, sir, that is a new station.

3283 Q. And you started in this new station in December 1957, to get this chronology correct?

A. Yes, sir.

Q. Now when you replaced the dealer at 55th and Walnut Street station, were the Goodyear signs up, the Goodyear window valance and outdoor sign?

A. Yes, sir.

Q. And you automatically began to purchase Goodyear TBA from Mr. Hagan, is that right?

A. Yes, sir.

Q. Now when you went out to your present station, in December 1957, were the Goodyear window valances and outdoor sign up when you went into the station?

A. Yes, sir.

Q. And did Mr. Hagan remain as your supply point at that location?

A. Yes, sir.

Q. I believe you testified that you occasionally buy from Albert Tire Company, is that right?

A. Yes, sir.

Q. And what brand would that be, what do they handle?

A. They handle all of them, Goodyear, Firestone.

Q. Which brand do you buy from them?

A. It varies, it all depends on the situation. I could buy Goodyear or Dunlap, it all depends on what I am selling.

3284 Q. Depends on what the customer asks for?

A. Yes, whatever the customer wants.

Q. Now you have known Mr. Heller for sometime, is that correct?

A. Ever since I went into the station at 55th Street. That is where I first became acquainted with him.

Q. And Mr. Heller still calls on you, right?

A. Yes, sir.

Q. Isn't it a fact that Mr. Heller solicited your business on DuPont from time to time?

A. He probably has, yes.

Q. I am referring now to the DuPont chemical line.

A. Yes, sir.

Q. And isn't it a fact that you might have stated to him that you were saving the PuPont chemical business for Mr. Hagan?

A. No, sir.

Q. But in fact you have testified that your principal supplier of DuPont chemicals is Mr. Hagan, is that right?

A. Yes, sir.

Mr. Kelaher: No further questions.

Mr. Fred Ballard: No questions.

Hearing Examiner Kolb: That is all.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn at this 3285 time until 2:15 p.m.

(Thereupon, at 12:55 o'clock p.m., the hearing was recessed, to reconvene at 2:15 o'clock p.m., this same date.)

3286

Afternoon Session.

(2:15 P.M.)

Hearing Examiner Kolb: The hearing will be in order.

THOMAS E. JONES was called as a witness on behalf of the respondent the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Thomas E. Jones, 219 Florence Avenue, McDaniel—Wilmington, Delaware.

*Direct Examination by Mr. Fred Ballard.*

Q. You are presently employed by Atlantic Refining Company?

A. Yes, sir.

Q. And what is your present occupation or position with Atlantic?

A. I am the promotable dealer, sales supervisor in the Wilmington district.

Q. When did you join Atlantic?

A. In January 1952.

Q. What was your capacity then?

A. I started out with a job classification called 3287 service salesman.

Q. What was your next job with Atlantic?

A. I was promoted to a job of promotable dealer salesman.

Q. Were you then promoted to your present position?

A. Yes, sir.

Q. What was the date of promotion to the present position?

A. December 1956.

Q. What was the date of promotion to promotable dealer salesman?

A. That was in August 1953.

Q. Have all these jobs been in the Atlantic Wilmington district?

A. Yes, they have.

Q. Before coming to Atlantic, what was your occupation?

A. I was in business for myself, service station business, operating service stations in the State of West Virginia.

Q. Now returning to Atlantic's Wilmington district, can you give us a general description of the area that that district covers?

Mr. Kelaher: I think that is already in the record in the form of a map.

Mr. Fred Ballard: I think so, yes, Jim, but I would like to get fresh in the Examiner's mind the rather broad scope of this.

Will you answer that question?

3288 Q. The Wilmington district is comprised of what is commonly known as the Delmarva Peninsula. It includes two counties in Pennsylvania, Chester and Lancaster Counties, all of the State of Delaware, and the eastern shore sections of Maryland and Virginia.

Q. And of course it includes metropolitan Wilmington?

A. Yes.

Q. Now, are there other oil companies besides Atlantic operating in that district?

A. Yes, there are.

Q. Could you give the names of some of them?

A. Of course we have Esso, Gulf, Sun, Mobil, Sinclair, Cities Service, Shell, Texas, Tidewater.

Q. American?

A. Calso.

Q. Does American operate in that area?

A. Yes, Amoco, American.

Q. Does Pure operate in your district?

A. Yes, Pure Oil operates in the district.

Q. Save-way?

A. The ones I listed were the majors. In addition to those we have three independent oil companies that operate in the district, Save-way, Spur, and Save.

Q. Is there active competition among those oil companies?

A. Very keen competition between the companies, yes.

3289. Q. On occasion are there what is known as price wars in the district?

Mr. Kelaher: Objection, your Honor. I would like to know the relevance of this line of questioning. What do price wars lead us to?

Mr. Fred Ballard: Your Honor, a number of the witnesses in this proceeding have testified to the existence of price wars. We feel the existence of price wars has a bearing on the witness' state of mind, and that will be brought out in later testimony, sir. I think it is relevant to show here that this is a keenly competitive area, where there is competition of that kind.

Hearing Examiner Kolb: I overrule the objection.

The Witness: Yes, there is a keen competition in the area, primarily because of these independent operators, that I mentioned, who oftentimes lower the price of their gasoline to get the market and of course the majors, to survive, must go along with it.

By Mr. Fred Ballard:

Q. Now, Mr. Jones, we have used the phrase "service station" in this proceeding, and I think we have generally

defined it as a station which has facilities for lubrication, washing, and the selling and installing of TBA. Using that definition, how many service stations are there in the Wilmington metropolitan area approximately?

3290 A. In what I would call the metropolitan area of Wilmington, there is between 250 to 275 service stations.

Q. If we include the entire Wilmington district, Atlantic's entire Wilmington district, how many service stations are there?

A. Nearly 800.

3291 Q. Are new service stations being built in the district?

A. Yes, in 1957 there were 23 just in the metropolitan area of Wilmington alone.

Mr. Kelaher: Excuse me. Do these figures relate specifically to Atlantic stations.

Mr. Fred Ballard: The questions I have asked—have you understood the questions I asked as relating to service stations of all kinds?

The Witness: Yes, you spoke of service stations, and I assumed that was everyone's.

By Mr. Fred Ballard:

Q. Now, speaking of Atlantic service stations, how many service stations does Atlantic own in the district for lessee operation?

A. There are 94 at the present time.

Q. Of those, how many would be in metropolitan Wilmington?

A. Fifty.

Q. There are also, I believe, some contract stations in Atlantic's Wilmington district?

A. Yes, our present count of contract dealers in the Wilmington district is 117.

Q. About how many of those are operating a real service station?

A. Of those, 18 are classified as promotable or the real service station.

3292 Q. There are also some distributors in the district, are there not, Atlantic distributors?

A. We have nine active Atlantic distributors in the district.

Q. They have about how many outlets?

A. Between 90 and 95.

Q. Would you have any idea what proportion those outlets would be service stations?

A. Around 30 to 34.

Q. Your particular concern, however, as promotable sales supervisor, is lessee stations; is that right?

A. That is true.

Q. Do you have also a few contract stations?

A. Promotable contracts, yes, sir.

Q. By that you mean a station that has full service station facilities?

A. Full facilities, as we describe a service station to be.

Q. How many personnel are under your charge?

A. Eight.

Q. Could you give us the numbers and classifications?

A. I have five men who are classified as promotable dealer salesmen, two men that are classified as retail specialists, and one man that is classified as a merchandiser.

Q. Are the classifications retail specialist and merchandiser a break down of what was formerly known 3293 as service salesmen?

A. Yes, there has been a name change, formerly known as service salesmen.

Q. What is the job of a promotable dealer salesman?

A. His primary responsibility is to keep tenanted the stations assigned to his territory, with the best possible

dealers he can find, and to promote the sale of Atlantic petroleum products.

Q. Does he also promote the sale of Firestone products to those dealers?

A. I would say all products that a dealer would be selling or retailing.

Q. Now, promotable dealer salesmen are paid on what basis, sir?

A. Well, they, of course, are on a salary, and then we have an extra compensation bonus plan.

Q. When did that extra compensation bonus plan go into effect?

A. April, 1956.

Q. Can you give us the general basis of the extra compensation plan?

A. Well, in extra compensation, the compensation earned is based on sales through stations that were open, this present year, and the prior year. You are paid on gains through outlets open both years.

3294 Q. How are the gains divided, roughly?

A. Gasoline is one section entirely by itself; motor oil is a second; and we have one for TBA and anti-freeze; and then there is a jack-pot bonus that an overall gain will give him for the compensation.

Q. Now, in 1957, how many of your five salesmen received a bonus?

A. Three out of the five earned compensation in 1957.

Q. What is the highest bonus that any of your salesmen ever had?

A. The highest bonus paid was a promotable salesman in 1956, who earned \$797.00 for the year.

Q. Do you recall what the highest amount paid to a salesman on account of TBA and anti-freeze was?

A. That was the same salesman, who received for 1956 TBA compensation of \$148.00.

Q. How many accounts does that salesman service?

A. During 1956 he handled 20 accounts.

Q. As sales supervisor, are you eligible for extra compensation under this plan?

A. No, sir, salesmen only.

Q. Are your promotable dealer salesmen allowed to take premiums or extra compensation from TBA suppliers whom they represent?

A. They are not.

3295 Q. Who is the person in your organization who is initially responsible for selecting dealers to man Atlantic stations?

A. Well, the initial recommendation, of course, is made by the salesman. He will interview a prospect, and then come to me, discuss what he has found with this man, and recommend that I then interview him, and together we make the recommendation on whether to accept him.

Q. Does that recommendation go to the district manager?

A. That recommendation is made to the district manager and oftentimes, if the district manager is in the office, he, too, will interview the prospect along with me.

Q. When the lease of an Atlantic dealer expires, what is the procedure with regard to renewing or not renewing that lease?

A. Well, the procedure that we follow is that 90 days prior to a dealer's lease expiring, the regional office where all the lease information is kept notifies us that the lease will expire on a certain date. The salesman calling on that dealer and I will sit down and discuss the man's past history, and study his finances and so forth, and then make our recommendation to the district manager that we renew the lease at the end of the period, and extend the lease for the dealer.

Q. Do you occasionally recommend that the lease be not renewed?

A. In my experience with Atlantic since 1952, as 3296 a salesman and supervisor, I have never made the recommendation to the district manager that we do not renew a dealer's lease.

Q. In deciding on your recommendations, do you discuss with your salesmen the brands of TBA that the dealers are handling?

A. No, it is not discussed, on what brands he handles.

Q. Now, is Atlantic's three-year lease policy in operation in your district?

A. Yes, it is.

Q. Are most of your dealers on the three-year lease?

A. We have in the district at the present time approximately 18 or 19 dealers on three-year leases.

Q. Under that policy—would you state your understanding of the three-year lease policy in general?

A. Well, for a dealer to become eligible for a three-year lease, he must first have successfully operated the station for two one-year lease periods. At the renewal of his third lease, he is offered a lease for a period of three years. It is up to the dealer to accept or reject.

Q. Is that offering automatic in all cases or on recommendation?

A. That is right, in fact, the regional office, at the expiration of the second one-year lease, will write us a letter and state this man is eligible for a three-year lease.

Q. If you do not agree with him, can you recommend to the contrary?

3297 A. If we don't recommend a three-year lease, we have to specify the reasons why, in writing, and return that to the regional office.

Q. Have you ever made such a non-recommendation?

A. Since 1953 I have made two recommendations, as a

salesman and supervisor, not to give the dealer a three-year lease, but in both cases we offered and he accepted a one-year lease.

Q. In either case was that recommendation for reasons of the brand of TBA that the dealer was handling?

A. No, the recommendation was strictly made in both cases for poor appearance of the service stations. We were having trouble getting the dealer to keep the station clean.

Q. Now, under Atlantic's three-year lease policy, or long-term lease policy, is there a provision for sending warning letters to dealers on three-year leases?

A. Yes, we can send warning letters to any dealer, either if they operate a one-year or three-year lease.

Q. Those warning letters, they would be considered with what?

A. Primarily appearance. That is the biggest thing, the biggest problem we have when we send a warning letter.

Q. Have warning letters been sent to dealers in your experience?

A. Yes.

Q. Have any of those warning letters finally resulted in the termination of a dealer?

3298 A. Not a one. In all cases where the warning was given for appearance, at the end of the 15-day time that we ask them to get cleaned up in, when going to the location with the salesman we always found what we wanted has been complied with, the station is clean and there has been no reason to cancel leases at the end of the warning letter period.

Q. I take it, however, that some dealers' leases have terminated in one way or another; is that right?

A. Yes, what we call mutually terminated.

Q. Who initiates most of these mutual terminations?

A. Most of those are always initiated by the dealer.

Q. What are the most usual reasons that the dealer, that would compel a dealer to initiate a termination?

A. One reason that comes up quite often is they have been offered a better location by a competing oil company. Hours, the hours it is necessary to put in at the station, the wife is unhappy because he is away from home so many hours. Finances, in some cases. Or a desire of some dealers to get out of that business and into some other type of business with shorter hours.

Q. Is it Atlantic's practice to honor these requests for termination of the lease?

A. Yes. When we receive a notice from a dealer that he desires to leave the location, we want him to leave as quickly as we can find a replacement.

3299 Q. Now, are the leases that are being signed in your district now the percentage leases, so called?

A. Yes. Since September 1956.

Q. Have you found that lease to be popular with the dealers?

A. Very popular.

Q. On an overall basis are the dealers paying less rent or more rent under these leases than they were under the previous leases?

A. Less.

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Overruled.

Mr. Kelaher: I think we ought to have a little more specificity with respect to some of these broad statements we are getting.

Hearing Examiner Kolb: You will have an opportunity on cross-examination to bring it out, if you wish.

By Mr. Fred Ballard:

Q. You may answer the question.

Mr. Kelaher: He did answer.

The Witness: We, as a district, are receiving less rent than we received on the old-type lease.

By Mr. Fred Ballard:

Q. Now, Mr. Jones, does Atlantic have a business interest in the success of its lessees?

A. Yes, very definitely. The successful lessee de-  
3300 termimes the success of our own company. We are  
selling our petroleum products through lessee loca-  
tions and if they are successful, of course, we will sell more  
products.

Q. Is it expensive to Atlantic to replace a dealer who terminates his lease?

A. Yes, these are actual figures. In 1957, the Eastern Pennsylvania region, it cost \$1,541 per trainee to train a man for the five-week training school. So, everytime we have a replacement, we are immediately faced with that experience, to train a man to replace a dealer.

Q. Do you also suffer a loss in gallonage when a dealer leaves his station?

A. Yes, we do, for many reasons. Personal credit, perhaps, the outgoing dealer has some he takes. If he moves to a competitive location in or around the neighborhood, he certainly takes some of his customers with him. Goodwill, which a man builds up over a period of time, is not transferable from one dealer to another; so, anytime we have a dealer changeover, we are faced with the possibility of a loss of gallonage.

Q. When a dealer does leave an Atlantic station, does he have a choice as to the disposition of his TBA and equipment that he owns?

A. Yes, he can either take it with him, if he is moving to a competitive location, or he can sell it to the incoming dealer.

3301 Q. Does Atlantic take any attitude with regard to the brand of TBA he has?

A. No.

Q. Is the incoming dealer free to buy any TBA from the outgoing dealer he wishes?

A. Yes, he is.

Q. Who determines the price as between the two dealers?

A. Well, of course, the outgoing dealer knows the price he paid for the product or item he is selling, and when we are making a change-over, we use the wholesale price as our guide, to sell it to the incoming dealer.

Q. Does that mean that the outgoing dealer generally recovers what he paid for the item?

A. Yes, he will have his full price back for it.

Q. Have you personally taken part in a number of these turn-over transactions?

A. Yes, I have.

Q. And in your experience, do they include substantial amounts of non-sponsored merchandise?

A. Yes.

Q. By that I mean non-sponsored TBA items.

A. Yes.

Q. Now, sir, do you find it easy or difficult to replace lessees when they leave your stations?

A. It is a very difficult job. You have 12 or 13 3302 major oil companies, competing in an area, and they are all looking for good dealers; so, finding a good dealer, when one decides to leave, is a very difficult job.

Q. Do you ever succeed in getting a dealer who is operating another company's station to come with you?

A. Yes, competitive stations is one of our main sources of new Atlantic dealers.

3303 Q. What other principal sources do you have?

A. Well, we have our own present dealers, where we will discuss with their No. 1 men or their employees, garages, car agencies, milk truck drivers, delivery men, that are used to meeting the public and perhaps you let it

out in the neighborhood that you are looking for a dealer; friends of the salesman or friends and acquaintances of my own I might have, organizations they belong to and meet people, newspaper ads of course, is a source we use constantly. We have an ad running almost daily in papers within the district. It is actually looking all the time and everywhere is what we are doing, constantly.

Q. When you are looking for a good dealer, what are the principal qualities you are looking for in a man?

A. Well, we are looking for a man who has the ability to meet and talk to people, he is going to after all be a salesman. We are looking for a man who can handle money, handle employees, can hire and train people. He has to be energetic, this in particular, and has to have a desire to make money and get ahead; all those characteristics a good dealer must have.

Q. Does he also need a minimum capital?

A. Yes, he must have some capital to invest, the minimum which at the present time is \$1,000.

And to obtain the other capital he would have to 3304 have, he has to have a good credit rating, too.

Q. When you are, I will say, selling the Atlantic franchise to a candidate of this kind, what do you stress with him, as the advantages of becoming an Atlantic dealer?

A. Well, the big things that we stress and it is a caption we carry in our newspaper ads, is "Be in business for yourself, be your own boss." You are an independent business man, not tied down to any whims of an employer as to when you will or won't work and the small investment versus the payoff, if the guy is a good and successful dealer, what it can be, free choice of doing just about what you want to do and in business for yourself.

Mr. Kelaher: Is that last responsive to the question?

Mr. Fred Ballard: I think it is.

Hearing Examiner Kolb: I believe so.

By Mr. Fred Ballard:

Q. How much do you think a successful dealer can make in a year?

A. We have many, many dealers that make over \$10,000 a year. We have quite a few that make over \$15,000 a year.

Q. Now when you are talking with a dealer candidate, do you tell him about Atlantic's TBA program?

A. Yes, we do, that is part of the franchise story.

Q. Mr. Jones, I show you a copy of Atlantic's Exhibit 18, which is a booklet entitled "What a service station can mean to you". This is a booklet that was used in Atlantic's Newark region. I ask you to look this over and let me know whether you use this kind of booklet in your discussions with dealer candidates, recognizing of course that the references in your booklet would probably be to Firestone and not to Goodyear and would be to local places and not to Newark.

Would you look that over and see if you use a booklet like that (handing to the witness)?

A. Yes, we use this book.

Q. Now in the course of discussing this booklet with the dealer, what do you say to him about Atlantic's TBA program?

A. Well, we explain what Atlantic's TBA program is, that we promote and try to promote with him, the Firestone brand of TBA. We tell him that from time to time part of the salesman's job is to promote the TBA line, the program that is being offered, the current promotions, and the stress with the salesman and particularly on the interview with either myself or the district manager, that the whole program is his to accept or reject.

Hearing Examiner Kolb: Was that Respondent's Exhibit 18-A?

Mr. Fred Ballard: A-18, yes, sir, this booklet.

3306 By Mr. Fred Ballard:

Q. Is it the policies and practice in your district for new dealers to be sent to the Atlantic training school?

A. Yes, we send all new dealers that we can get to attend the Atlantic dealer training school.

Q. Is it the practice also to send new members of the sales organization to that school?

A. Yes, that is the first step in the training of a new man, is to attend the five-week course.

Q. I show you, sir, a copy of Commission Exhibit 207, which as you can see is a form of letter from a regional manager to Atlantic dealers, dated June 24, 1955, and it is entitled "No Forcing". Is that letter given to each dealer each time he renews or signs a lease?

A. It is. It is part of the procedure to give him that prior to his signing a first lease with the company and at every renewal date.

Q. Do you personally make sure that is done?

A. Yes, I do.

Q. Mr. Jones, in your observation of the business of Atlantic dealers in your area, do you think it is in Atlantic's interest to have a TBA program?

A. Yes, I feel it for several reasons. In today's service station business, TBA is absolutely a necessary sideline.

A fellow must have it to be successful. He must have 3307 the things that the TBA line affords, that customers are coming into his place of business want to buy. I think that definitely the company has to have an interest in it because of so many people that are in the TBA business that owe no loyalty or have no interest in this dealer, other than selling his merchandise. And that the dealer needs coaching and counseling by someone who has experience, to guide him in just what he can afford to buy and how much he can afford to have, because without that interest, on his part, he would soon be TBA-poor.

It would be possible he would have many things in his station which would be very slow movers and he would have too much money tied up to remain in business and have the necessary capital he would need to work with.

Q. Does Atlantic have an interest in the quality of the TBA that its dealers handle?

A. Yes, very definitely, because we have to have an interest in the quality; otherwise, customers buying an inferior product would of course look to Atlantic as being partly responsible, that he was able to get that. That would be true particularly with credit card customers and has happened on occasion, where the credit card customer writes the home office, making a complaint about merchandise he bought in an Atlantic station.

Q. There are, however, other concerns that do 3308 offer TBA to the Atlantic dealers in your district, is that correct?

A. Yes.

Q. About how many offering TBA or any combination of TB and A?

A. Oh, a combination of all?

Q. Well, take them either way that is easiest for you to analyze it.

A. We have two major concerns in Wilmington that handle a complete line of tires, batteries and a very complete line of accessories. They of course would be able to offer any or all to a dealer they were calling on.

Q. Are those two in addition to Firestone?

A. Yes, in addition to Firestone. Then we have another five tire marketers, that are very active in the service station tire market, three or four of which would handle batteries, but no accessories, nothing more than tires or batteries. Then we have about six or seven major source houses or parts houses, that are very active in the acces-

sory business, but they don't handle a line of tires or batteries.

In addition to those, we have an untold number of suppliers who work out of their truck, stop at a station, make the sale on some accessories item and sell it right out of the truck and collect for it and go on their way.

Q. Do you personally visit the stations of the Atlantic dealers, promotable dealers, in the Wilmington district?

3309. A. Oh, yes, yes, every day.

Q. Do you see there the TBA they have on display?

A. Yes, it is very visible, setting on the shelf, displayed in the station.

Q. Do you observe on their shelves TBA items not carried by the Firestone store?

A. Yes, in all stations there are some items not handled by Firestone.

Mr. Kelaher: Your Honor, at this stage I am going to object to any further leading questions.

Mr. Fred Ballard: I don't think I am leading the witness. I am directing his attention to the items.

Mr. Kelaher: The last question was leading.

Hearing Examiner Kolb: Read the question.  
(Question read.)

Mr. Fred Ballard: Your Honor, I submit that is simply suggesting to the witness the line of testimony.

Hearing Examiner Kolb: All right, proceed.

By Mr. Fred Ballard:

Q. Mr. Jones, does Atlantic have any policies with regard to the use of credit cards in connection with the non-Firestone TBA?

A. No, it is a practice that the dealers can sell anything

on the credit card as long as the amount does not exceed \$150 and it can be of any brand.

3310 Q. As a matter of practice is any check made to see what brands the dealer is selling on the credit card?

A. No, none to my knowledge at all.

Q. As a matter of practice does Atlantic conduct inspections of the Atlantic stations in your district?

A. Yes, we have two inspection programs. We have one that is called the customer shopping inspection by the home office, which is directly out of Philadelphia, and we have that same inspection program set up on an original basis, where we have a regional customer shopper.

Q. Are those inspections concerned with the brands of TBA that are carried by the dealers?

A. No, those, they are unannounced inspections where a person will drive into the service station and make a purchase of gasoline and there rate the service he received on the driveway, the appearance of the service stations, and the appearance of the rest rooms. There is no mention of TBA at all.

Q. Are those reports of those inspections shown to the dealers?

A. Oh, yes.

Q. Are they discussed with the dealers?

A. Yes, they are.

Q. Do the dealers express themselves as pleased with the program?

3311 A. Yes, because it helps a dealer to get occasionally a rating through the eyes of someone that actually came in and checked the station as a customer, and the dealer is then aware of how his station looks through the eyes of a customer and he also occasionally finds out what kind of service is being given by an employee when he is not there.

Q. In your capacity as sales supervisor, do you occasionally receive complaints from dealers about one thing or another?

A. Yes, I do.

Q. What do the majority of those complaints concern themselves with?

A. They are mostly all about facilities. They need an extra bay to enlarge their repair business, they need more lights, they need more modern pumps, they need something fixed up around the station and facilities they are working with.

Q. Have any of them ever complained to them about forcing by an Atlantic salesman?

A. No, I have never received a complaint on forcing by one of my salesmen.

Q. Mr. Jones, is it part of your salesmen's duty and was it part of your duty when you were a salesman, to promote Firestone TBA?

A. Yes,

Q. Where a dealer is not carrying the Firestone 3312 brand, what effort do you make to promote Firestone to him?

A. Well, where I had a dealer who didn't carry the Firestone line, I would talk to him about the public acceptance of the line, the quality of the merchandise that they handled, I was in a position in many cases to offer some sort of a special, that was a promotion in effect for a period of time, that gave them a price advantage. We were always able to compare prices and offer him more profits, in most cases, than where he was buying.

Of course national advertising, you always could pick up a current magazine and show the guy where the Firestone Company was promoting and advertising a line we would like for him to carry. The locale of the district is fortunate in having supply points that are centrally

located, and we were always able to talk to him about the closeness of a supply point, and the good service the supply point could provide.

Those are some of the features that, as a salesman, I was able to talk to a dealer that didn't handle the Firestone line.

Q. Suppose in the case of a dealer who was already handling the Firestone line, what would you do to promote Firestone to and through him?

A. Well, on every sales call, I would check his stock, and determine if he needed a replacement order. Once again, we had the current TBA promotions that we could discuss with him, the deals or promotions that were in effect. If he was handling Firestone, he was eligible for budget-buying or dating, buying and paying for it at a later date. If he had any complaints of service or not getting service from the supply point, or some complaints on billing; I was always in a position to work between the supply point and dealer and get those settled.

Q. From time to time, are there new developments in the Firestone line?

A. Well, there are new developments in the whole TBA line, that we of course would receive service tips on, or information from Firestone, that we were able to pass on to the dealer's organization.

Q. On occasion did you go in team, that is, call in company with a representative of the Firestone supply point?

A. Yes, on a regular basis.

Q. Did you occasionally team with representatives of the manufacturers of Firestone accessories?

A. Yes, we did.

Q. Do your salesmen do that today?

A. Yes, we do.

Q. About how many days a month do they spend double-teaming on the average?

A. Well, they are scheduled one day per month, 3314 excluding dealer change-overs, where you have a dealer change-over, and that is excluding that sale of TBA at the time, they are to spend one other day a working month, the double team, with the Firestone representative.

Q. Do they spend other parts of other days on TBA problems?

A. Oh, yes, you have TBA problems sometimes every day, minor problems you would work on and work out.

Q. How many major Firestone supply points — how many Firestone supply points are there in your district, for Atlantic stations?

A. There are five major supply points.

Q. How many of those are company stores?

A. Two of those are company stores, the other three are Firestone distributor outlets.

Q. Is it part of your job, first as an Atlantic salesman and then as an Atlantic supervisor, to know the prices that those Firestone stores are charging your dealers?

A. Yes.

Q. Is there ever an occasion where you — well, are those prices in general competitive with the prices charged by competitive stores?

A. Yes.

Q. Are there ever cases where the dealer is dissatisfied with the prices Firestone stores are offering?

A. Yes.

3315 I can think of one. As a salesman, where a re-threader of retread tires out of New Jersey came into Wilmington and was opening a market and came in offering a larger discount than either Firestone or any other retread shop in the area was offering, and he was

doing it of course to get started in the market, and Firestone, upon our recommendation and their investigation, found the prices to be right, and lowered their discount on retreads to the dealers this guy was calling on, the competitor.

Q. Is it possible for a dealer, on occasion, to buy other brands cheaper than Firestone?

A. Not counting the quality of the two grades.

Mr. Kelaher: I move to strike the latter part of the answer.

Mr. Fred Ballard: Your Honor—

Mr. Kelaher: He hasn't been qualified as an expert on quality. He answered the question.

Hearing Examiner Kolb: The objection will be overruled. The answer will stand.

By Mr. Fred Ballard:

Q. Leaving aside the question of quality of brand, is it possible for the dealer on occasion to buy tires, some tires, cheaper than Firestone?

A. Some tires, yes.

Q. Are those, in your experience, lesser known 3316. brands than Firestone?

A. Yes, they are.

Q. In your experience, can a dealer make as much profit selling those brands as he can with Firestone?

Mr. Kelaher: Objection. I don't think he is qualified to testify as to the profit margin of a dealer with respect to other tire brands.

Mr. Fred Ballard: Your Honor, the question is not about a dealer. This man sells.

Mr. Kelaher: That is what the question called for.

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Kelaher: As I understand the question, it calls for the dealer's profit margins on tires other than Firestone.

Mr. Fred Ballard: I will hold the question then, and ask it this way:

By Mr. Fred Ballard:

Q. Mr. Jones, what determines the amount of profit a dealer makes on the tires he sells?

A. Well, I don't understand the question, what determines the profit.

Q. Mr. Jones, in promoting the Firestone brand to dealers do you tell them that it will bring greater profits for them or do you not?

A. I tell them it will.

Q. What reasons do you give to them for so saying?

A. Well, when selling the Firestone tire, they are selling a quality tire, that has a suggested list price; they can sell it for what they want to, but the suggested list price versus their buying price, the margin of profit is very good, versus—and I am thinking of another tire a dealer can buy and have had experience with—a Vanderbilt tire, where a tire is cheaper. But at the same time to be sold and to be purchased by a customer, it has to be sold at a much lower price, so the profit the dealer would be getting actually is not as large.

Q. Does Atlantic, in your district, organize dealer meetings?

A. Yes, on a regularly scheduled basis.

Q. And dealer clinics?

A. Yes.

3318 Q. Do those meetings and clinics on occasion relate or are they concerned with Firestone TBA?

A. Yes.

Q. Does Atlantic run them?

A. Yes.

Q. Atlantic personnel runs them?

A. Yes, they do.

Q. Atlantic, of course, has a TBA coordinator for the Eastern Pennsylvania region?

A. Yes, we do.

Q. Does he visit your district?

A. Yes, quite often.

Q. And he is concerned entirely with TBA?

A. Entirely with promoting of TBA, yes.

Mr. Kelaher: Could we have the gentleman's name.

The Witness: George Fearn, F-E-A-R-N.

By Mr. Fred Ballard:

Q. The man's name we are looking for is the TBA coordinator.

A. He is regional TBA coordinator.

Q. I am told your spelling was wrong.

A. F-E-A-R-N.

Q. Excuse me; that is right.

No. Mr. Jones, you were present, I believe, at the hearings that were held in the Wilmington district in this proceeding, in July of 1957, were you not?

3319 A. Yes..

Q. Do you recall the testimony—you may recall that one Richard Brown testified.

A. Yes, I do.

Q. Richard Brown was a former Atlantic dealer?

A. Yes.

Q. Referring to page 1290 of the record, Mr. Brown was asked this question: "Were any comments ever made by Mr. Klein with respect to non-sponsored TBA you purchased?" The answer was, "Yes, he said he didn't like it, it affected his salary."

Then, on page 1291, Mr. Brown was—I think I had better

read the whole thing: "Q. He said it affected his salary?" "A. Yes. "Q. Do you recall the approximate time of the conversation?" "A. I think it was about May 1955." "Q. Do you mean '56?" "A. Yes, 1956." "Q. Do you recall his language, substantially?" "A. He just—they told me only I was cutting their throats, cutting their salary by not buying from Firestone." "Q. Did any one in addition to salesman Klein from Atlantic make such comments?" "A. Mr. Jones made one time or several times, and Mr. Gus Conway made it once."

Mr. Jones, did you ever say to Mr. Brown, in words or to the effect, that he was cutting your throat by not buying from Firestone or that he was cutting your salary by not buying from Firestone?

3320 A. Definitely not. I never called on Mr. Brown as a salesman. It was only in the capacity of a supervisor, and, as such, I was not on the extra compensation; so TBA, one way or another, made any difference to me.

Q. In fact, was Mr. Brown at that time in a position to buy more from Firestone?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: The objection will be overruled.

The Witness: No, he wasn't, because Mr. Brown's credit with Firestone was such that Firestone would only make him deliveries on a cash basis. He owed them money for quite sometime; his checks bounced whenever he gave one. And to the contrary, the salesman and I were willing for him to buy TBA wherever he could get it, because we definitely knew he couldn't get it from the Firestone supplier.

By Mr. Fred Ballard:

Q. Now, sir, at page 1292 of the record, Mr. Brown was asked this question by Mr. Kelaher: "You left the station

in April 1957. Will you give us the circumstances leading up to your leaving the station?" The answer: "Mr. Jones came in one night and we were standing there talking, and he just up and told me he had somebody else for the station, if I wanted to get out, that they would put him in. So,

I thought it over. It made me kind of mad. I wasn't 3321 mad to start with. I thought that was a heck of a thing for a man in his position to be saying, that I had never said anything about it. The next day I called the salesman and told him if he felt that way, I was getting out."

Do you recall any conversation to which Mr. Brown may have been referring in that testimony?

A. Yes, I do. Sometime during the first week of March, Mr. Klein, my salesman, came to me, told me that Mr. Brown wished to leave the location and that he was going to look for a replacement and replace him as quickly as possible. About three weeks later Brown called me on the telephone in the office and told me that he had given Mr. Klein such a notice, and that evidently Mr. Klein wasn't doing anything to replace him. I knew better than that, because I had talked to Bob several times in the intervening three weeks about what he was trying to do to get a new dealer. Living near that station, or in that neighborhood, I told Mr. Brown that I would stop that evening after work and talk to him.

So, that evening I stopped at the station, and at that time told Brown that I knew that Bob was working trying to find a replacement, and that we had a dealer in the school being trained at that time, that if Brown would stay another two weeks until this dealer graduated, that we would put the graduate dealer in his station, which Brown agreed to do, and everything was satisfactory.

3322 Q. Did you finally put that graduate in the station?

A. Yes, we made the change-over with that graduate after he got out of school.

Q. You will also recall or were you also present when an ex-dealer named John Galla testified at the Wilmington hearing?

A. Yes, I was.

Q. At page 1251 of the record, Mr. Kelaher asked Mr. Galla this question: "Was there a time when you attempted to buy other brands at cheaper prices?" Mr. Galla's answer was: "I wouldn't say I attempted to buy cheaper brands. I looked into it rather thoroughly to see what situation existed in the market, and I found out I could buy competitive brands at a better price than offered by Firestone." "Q. Does that apply to both tires and batteries?" "A. Yes." "Q. Could you designate the brand on which you could get better prices?" "A. Well, at one time one of these supply houses, at that time, one of the supply houses offered me Auto-lite battery at a better price, and a salesman from Keil's came around and offered me tires at a better price." "Q. What kind of tires?" "A. I think it was Goodyear, I believe it is Good-year." "Q. Who offered you the better price on Auto-lite batteries, what jobber?" "A. Adams Parts." "Q. Do you recall the name of the salesman?" "A. Herb Dasher." "Q. After you made this study of prices, did you discuss the matter with an Atlantic representative?" 3323 "A. Yes, I did." "Q. Who was the Atlantic representative?" "A. At that time it was Tom Jones." "Q. Would you state the conversation that you had with Mr. Jones?" "A. Well, at that time I took it up with Tom; I thought it might be better as far as I was concerned personally in the business if I could buy cheaper from another source of supply, other than Firestone, and Tom had said that I had signed an agreement to purchase from him, that is, TBA—tires and batteries—from Firestone, and that more or less you shouldn't go against the agreement, plus the fact that Atlantic didn't like to see competitive brands to Firestone in the station."

Then, after a discussion, there was another question: "Did Mr. Jones make any further statements at that time?"

"A. Other than they didn't like to see competitive tires and batteries in the station. If I took them in, I would probably have a visit from men above Tom in the Atlantic office."

Mr. Jones, do you recollect some such conversation as that between yourself and Mr. Galla?

A. I recall a conversation with Mr. Galla on tire prices. There was nothing discussed about batteries, and I recall nothing ever being said about batteries. I do recall a conversation on tires. It was brought about because on a regular sales call, when I stopped at the station, I saw spread out on the desk several price sheets of Goodyear tires. I asked Galla at the time was he considering 3324 handling Goodyear tires, and he said Yes, because I can make a better buy. What had happened—

Mr. Kelaher (interposing): Objection, your Honor, unless we get the conversation.

Mr. Fred Ballard: Confine yourself, Mr. Jones, to what Galla said to you and what you said to him, to the best of your recollection.

The Witness: I am sorry. Mr. Galla told me he felt he could buy Goodyear tires cheaper. We sat down together, taking his Goodyear sheets, and my Firestone catalog, and by comparing the same quality tires, he was presently buying Firestone at 20 cents cheaper on the tire. Then, he asked me what should he do, because he had a customer who was talking about Goodyear tires, could he stock them for that customer. And I pointed out or asked him what, or why he would want a complete stock for one sale. And I told him at that time by all means if the customer could not be sold Firestone that he had in stock

to buy the Goodyears and make the sale and make the profit. I remember the conversation very distinctly.

By Mr. Fred Ballard:

Q. Mr. Jones, as far as you know, did Mr. Galla have any agreement to purchase tires from Firestone?

A. No, no agreement was signed at all to that effect.

3325 Q. Have you ever been instructed as an Atlantic salesman or sales supervisor to get competitive brands out of Atlantic stations?

A. No, sir.

Q. Actually, do you see competitive brands in Atlantic stations everyday?

A. Everyday, and practically every station.

Q. Now, sir, you may recollect that another dealer who testified in Wilmington was a, I guess he was an ex-dealer, Harry N. Hawes, and on page 1280—

Hearing Examiner Koll (interposing) What was the name of that man?

Mr. Fred Ballard: Hawes, sir.

By Mr. Fred Ballard:

Q. He was asked this question: "When you left that third station, did you have any TBA on hand?" "A. I did, yes." "Q. Can you tell us what TBA you had on hand, what brand of tires, for example?" "A. I had quite a few tires and tubes." "Q. What brand?" A. Lee."

I am now skipping some questions. On page 1281, "Q. Did the new dealer come into that station when you left it, the third station?" "A. Yes, he did." "Q. Did he buy your Lee tires, tubes, and batteries?" "A. No, he didn't." "Q. Did you attempt to sell them to him?" "A. Yes,

I did." "Q. Did he refuse?" "A. Here again he didn't refuse, so much."

3326 "Q. Who did?" "A. The same friend over there, sitting. They wouldn't be bought. I can't recall his name." "Q. Mr. Arnaud?" "A. Mr. Arnaud."

And then, Mr. Thompson said: "The same friend said what?" And Mr. Hawes said "that the dealer was not buying those tires. He answered for him."

Now, Mr. Jones, is Mr. Arnaud one of the salesman who is responsible to you?

A. No, not at the present time. He has been promoted to another job.

Q. Was he at the time in question, when Mr. Hawes checked out of his station?

A. At the time in question, he had been transferred, too; he had been promoted at that time.

Q. I think we had better find out which time we are talking about. Is it your understanding that Mr. Arnaud did or did not take part in Mr. Hawes' check-out?

A. Yes, he did.

Q. At my request, and in your capacity as sales supervisor, have you checked this testimony with Mr. Arnaud?

Mr. Kelaher: Objection, your Honor. I think we are getting into a rare form of hearsay here. If he is going to testify as to conversation between Mr. Arnaud, the Atlantic dealer, and Mr. Hawes.

Hearing Examiner Kolb: Off the record.

3327 (Discussion off the record.)

Hearing Examiner Kolb: On the record.

That last question is not objectionable. He can answer Yes or No to that.

The Witness: Yes, I did.

Hearing Examiner Kolb: All right, proceed.

By Mr. Fred Ballard:

Q. Will you tell us what Mr. Arnaud told you about the conversation he had, or the check-out of Mr. Hawes?

Mr. Kelaher: This I object to unless it is specifically understood this is based on a check made after the testimony in question.

By Mr. Fred Ballard:

Q. Was your check with Mr. Arnaud made after Mr. Hawes testified in this proceedings?

A. Yes, they were.

Q. Was it made at my request?

A. Yes, sir.

Q. What did Mr. Arnaud say to you about this transaction?

A. The Lee tires and tubes at Mr. Hawes' third station were placed there on consignment, and as such, were not Mr. Hawes' property to sell. Mr. Arnaud knew that, because of being his salesman, and so advised Mr. Hawes that he could not permit the incoming dealer to buy consigned stock.

Mr. Kelaher: I object. As I understood the question, he was going to testify as to what he told Mr. Hawes. Is that not correct, not as to all the reasons.

By Mr. Fred Ballard:

Q. Mr. Jones, is that what Mr. Arnaud told you?

A. That was what Mr. Arnaud told me he had told Mr. Hawes.

Mr. Kelaher: I think he should be limited on a question of this importance as to what he did specifically tell him.

By Mr. Fred Ballard:

Q. Would you state to the best of your knowledge what Arnaud said to Mr. Hawes?

A. Mr. Arnaud told Mr. Hawes that he was aware that

the merchandise was consigned, and, as such, was not Mr. Hawes' to sell.

Q. Now, there was also a dealer who testified named Mr. James Parag. The question was asked him, at record page 1334, "Q. Would you mind reciting some of the statements by Mr. Jones?" A. Well, he told me that if I didn't handle according to what Atlantic handled, he said I would lose by lease, which I knew from before this that I wouldn't stay in there longer than August anyway, because it started from the time I went to school. I was supposed to be going to the Atlantic school."

Now, Mr. Jones, did you ever tell Mr. Parag that if he didn't handle what Atlantic handled, he would lose 3329 his lease?

A. I did not.

Q. Did you ever tell him that if he didn't handle Firestone TBA he would lose his lease?

A. No, sir.

Q. In fact, what TBA did he handle mostly?

A. Well, he handled mostly Goodyear, because he couldn't get Firestone.

Q. Why was that?

A. Well, prior to Mr. Parag's becoming an Atlantic dealer, he was in the trucking business. I didn't know this at the time, but he had purchased Firestone tires in this trucking business, and they, in turn, had brought suit and garnisheed his truck and tied the thing up and did everything they could to collect for the tires and finally, as a last resort, were forced to remove the tires from the truck to get their money.

By Mr. Fred Ballard:

Q. Do you know of your own knowledge whether or not Mr. Parag was engaged in financial difficulties with Firestone stores?

A. Yes, he was.

Q. Do you know of your own knowledge whether Firestone store would or would not sell to him on credit?

A. They would not.

Q. Do you know of your own knowledge the reason that the Firestone store, the grounds that the Firestone store asserted for not selling Mr. Parag on credit.

Mr. Kelaher: Objection.

Mr. Fred Ballard: That is a part of this man's job, and he so testified when dealers have difficulty with the Firestone store, he goes down and finds out what it is about and tries to get a satisfactory adjustment for his customer. I think he is allowed to testify why the Firestone store—

Hearing Examiner Kolb (interposing): I think you covered the point by showing he could not buy Firestone because his credit was no good. There is no use going into what Firestone told him as to why it wasn't.

Mr. Fred Ballard: I think you are right, sir.

By Mr. Fred Ballard:

Q. Now, page 1347 of the record, the question was asked of Mr. Parag, "Did you advertise your Goodyear products?" "A. No, sir." "Q. By signs?" "A. We were not permitted." "Q. By whom were you not permitted?" "A. Mr. Jones."

Mr. Jones, do you recall any conversation between yourself and Mr. Parag having to do with Goodyear signs?

A. The only conversation I recall regarding Goodyear signs is that Parag requested me to get him Goodyear signs for his service truck, and I had no way of getting Good-year identification signs. At that time he wanted to know if he could put them on his truck, and he was told it was his truck, he could put any kind on that he wanted to.

3332 Q. Did you tell him that?

A. I told him that, yes.

Q. Did he then put Goodyear signs on his truck?

A. No, he never did get around to doing it.

Q. Now, sir, do you recall an ex-dealer, Mr. Norris Stein, on the bottom of page 1167 Mr. Stein was asked this question:

"After you started handling other than Firestone, did you receive any complaints?"

"Answer: Yes, I did."

"Question: What type of complaints did you receive then?"

"Answer: The one that stands out in my mind is that my Atlantic salesman made a remark to me one day that if I didn't handle Firestone products, I wouldn't long be an Atlantic operator-dealer."

Now then, after that question and answer it was established, at least Mr. Stein said that the incident occurred in December 1954 and that the salesman's name was Jones. I assume you are the Jones who was Mr. Stein's salesman in December, 1954?

A. Yes.

Q. Do you recall any conversation with Mr. Stein to the effect that he might not long be an Atlantic operator or dealer?

A. I am not certain of the date. I do remember a 3333 conversation I had with Mr. Stein where several things that he wasn't doing were contributing to the decrease in his business to such an extent that for what he was getting out of the business, he would soon lose interest and wouldn't desire to be a dealer. At this time the station appearance had become very bad, he had shortened his hours up considerably, he had decreased his help to such a place that he was a one-man operation, and all these things were contributing factors to a decline in the gallonage at this location and knowing Mr. Stein and the standard of living that he was accustomed to, I felt sure

that if these things were not remedied, that he wouldn't be satisfied with the income the station would provide for him.

Q. And do you recall an ex-dealer who testified in Wilmington named Thomas Sullivan?

A. Yes.

Q. At page 1221 of the record he was asked this question:

"Thereafter did you purchase any other brand of battery?

"Answer: Yes, I did. I purchased some Bowers batteries from a direct salesman.

"Question: Direct salesman from Bowers Company?

"Answer: Yes, and I purchased—well, I can't say I purchased them, I ordered some Exide batteries, 3334 the jobber's name now slips me. Anyhow, they delivered the batteries, but I actually had not made the purchase because usually when a dealer buys a list of items from a jobber, he is billed for them and pays for them at the end of that month. Within that period I was approached by Mr. Jones, and told that I should not sell those batteries, they weren't as good as the Firestone batteries, and that he didn't want me to display them in the station. So I removed the batteries from display in the display room of the station, to the back of the bay in the station and the Exide battery returned to the jobber."

Now, sir, do you recall any conversations between yourself and Mr. Sullivan relating to Bowers or Exide batteries?

A. Yes.

Q. Would you tell us the substance of that conversation?

A. Well, the Bowers batteries are the only batteries that he had at the station, the only ones I recall talking to Sul-

livan about. He bought the Bowers batteries because he felt he needed a cheaper battery.

Q. When you say he bought them because he felt, is that what he told you?

A. Yes, he told me that he felt he had to have a cheaper battery, to offer to his customers. I sat down with 3335 him, and at the time, as part of our Firestone catalogue, we had comparison charts, Firestone brand versus the other major brands. The Bowers battery was a battery of less plates than the Firestone Motor King and when the quality of the items were concerned, the \$1.50 difference from the price was not enough of an offer that Sullivan should try to sell them to his customers.

We discussed the qualities of the two lines of batteries, and Mr. Sullivan at that time agreed that the Motor King was the best battery and he could sell them for the additional \$1.50. Now the moving to the back room, at that time they were sitting on the bottom shelf in the sales room. The Bowers was a wet battery, it was the acid and water was in the battery at the time you bought it and as such, if not placed on a trickle charger, would soon run down, and would have to have been recharged before it could have been sold.

I pointed out to Mr. Sullivan that if he was going to keep the Bowers batteries, he should put them on the trickle charger and keep them charged. They were moved to the back of the bay, because that is where the trickle charger was sitting and located in the station. He put them there and connected them up.

Q. Now, Mr. Jones, at my request, did you investigate the whereabouts of a former Atlantic dealer named— 3336 two former Atlantic dealers, Edgar Cornman and Robert Miller?

A. Yes, I tried to locate them.

Q. Have you been able to locate either of them?

A. Neither one. Mr. Cornman's last known residence, the contact I was able to make, he had moved to Indiana.

Mr. Miller and his wife had separated and no one seems to know his present whereabouts.

Q. Did you look at the files, Atlantic's files, regarding the termination of these two gentlemen's leases?

A. Yes.

Mr. Fred Ballard: I have no further questions.

Mr. Kelaher: Your Honor, on direct examination there were quite a number of matters gone into. I think I will have to ask for a little time to review this record before I begin my cross-examination. I mean by that, I am talking

in terms of 15 or 20 minutes, or a half hour. It will 3337 take a little time to review the testimony of these witnesses. I think almost every—well, he mentioned for example the testimony of a number of the dealer, or ex-dealer witnesses in Wilmington who testified concerning Mr. Jones. And I would like to have—not a deferred cross, but I would like to have a little time to review his direct examination, or if you care to handle it another way, if they want to call the next witness, and maybe we could do it that way and put this gentleman over until morning.

Hearing Examiner Kolb: Any objection to deferring cross-examination to tomorrow morning?

Mr. Fred Ballard: I have no real objection. If Mr. Kelaher is planning a short cross-examination, I think the witness and everybody else would like to get through. He has been here most of the day and I have witnesses coming from New England tomorrow, who have to be put on in the morning because they have reservations back.

Hearing Examiner Kolb: We could start at nine o'clock tomorrow morning, if you prefer.

Mr. Fred Ballard: That is kind of rough.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will recess for five minutes.

3338 (A short recess was taken.)

Hearing Examiner Kolb: Come to order.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Jones, at the outset I would like to get the Wilmington district straight. I am going to ask you to look at Commission Exhibit 249 and ask you if that still constitutes the map of the Wilmington district (handing to the witness)?

A. Yes, that is the division line of the district.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Kelaher:

Q. Now the Wilmington district extends up into part of Pennsylvania, does it not?

A. Yes, two counties in Pennsylvania.

Q. Two counties in Pennsylvania. And would you repeat those?

A. Chester County and Lancaster County.

Q. That would be just a section of Lancaster County, I presume?

A. Yes.

Q. Now on the other side of the Wilmington district line, going north toward Chester, you get into the 3339 Philadelphia suburban district, is that correct?

A. Right.

Q. And in that district, they sponsor Goodyear, Atlantic sponsors Goodyear TBA?

A. Yes, I believe they do, yes.

Q. How far does the Wilmington district line come to Chester, Pennsylvania?

A. What? Come to Chester, Pennsylvania?

Q. Is it a matter of five or six miles?

A. Our district line stops at that point at the Delaware-Pennsylvania line, at the border.

Q. How far would that be from Chester, ten miles or so?

A. Ten or eleven miles.

Q. Now you were a service salesman with Atlantic beginning in January 1952, and until August 1953, is that correct?

A. Yes.

Q. Then you were promoted to promotable dealer salesman. And you remained a promotable dealer salesman until December 1956?

A. Yes.

Q. What is your correct title now?

A. Dealer Sales Supervisor.

Q. For the Wilmington district?

A. Yes.

Q. You testified in connection with the TBA in 3340 centive plan or I should say in connection with the bonus plan, which includes TBA, that a particular salesman received the highest amount paid. Was that in recent years, 1956?

A. That was for the year 1956.

Q. What was his name?

A. Robert Klein.

Q. Is that the Bob Klein you have been referring to in your testimony today?

A. Yes.

Q. It is a fact, is it not, that the bonus system is an

incentive system, designed to increase the sales of the particular products involved, in the Atlantic program; including TBA?

A. Yes, it is an incentive based on the sales over and above last year, through the same number of outlets.

Q. As I understood your testimony, the dealer, promotable dealer salesman does not receive a bonus unless he shows an increase over the prior year's sales?

A. That is true.

Q. On your direct examination you made reference to certain warning letters. I am going to show you Commission Exhibit 251 and 252, which are three warning letters relating to dealers in the Wilmington district, and ask you if you were the promotable dealers salesman or sales supervisor at the time these letters were sent (handing to 3341 the witness)? Commission Exhibit 250 is a letter addressed to Mr. Norris A. Stein, Lancaster and Ford Avenue, Wilmington, Delaware, 1955.

A. That is right. I was a salesman at the time.

Q. Exhibit 251 is a letter dated February 7, 1956, to Mr. Alfred Trivits at the address given in Laurel, Delaware.

A. I was not his salesman or the supervisor at that time.

Q. Commission Exhibit 252 is a letter dated December 21, 1956, addressed to Mr. William White, SP, at the address given in Wilmington, Delaware.

A. I was a supervisor at the time.

Q. December 1956, you had just started on your duties as—

A. Twenty-one days previous, yes, the first of December.

Q. As a sales supervisor.

It is Atlantic's policy, is it not, and yours as sales super-

visor, to supervise the hours of operation of Atlantic stations?

A. Only to this extent: We don't supervise the hours by establishing set hours. We supervise the hours he should be open in relation to the competition in his area.

Q. And isn't it a fact, as shown by Comission Exhibit 252 that you do threaten lessee dealers with lease cancellation, if they do not remain open the hours you deem sufficiently long for that particular station?

Mr. Fred Ballard: Your Honor, I object to the 3342 characterization of Commission Exhibit 252. He says as shown by it. He is not showing it to the man.

Mr. Kelaher: I just showed it to him. I think he is qualified to answer the question.

Mr. Fred Ballard: I object to the characterization. Hearing Examiner Kolb: He just saw it, didn't he?

Mr. Fred Ballard: He looked at three of them. I don't know if the word "threatened" appears in there or not. The exhibit speaks for itself. Mr. Kelaher is simply characterizing that as some kind of threat.

Hearing Examiner Kolb: Show it to the witness.

By Mr. Kelaher:

Q. I show you Commission Exhibit 252 and ask you to examine that and read it.

A. All right.

Q. Now will you answer the question, please?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Fred Ballard: I object to the question again. If he wants to ask whether they send these warning letters it is all right. I don't see how he can add anything to the letter itself.

Hearing Examiner Kolb: This is cross-examination. The objection is overruled.

The Witness: I don't agree with your word 3343 "threat". We do send warning letters when dealers are operating a business, contrary to good business standards. This particular letter I remember. I know that the dealer was closing at six o'clock in the evening, which is much too early to close a service station in the area that it was located and with the hours of competition in that area. That was the reason for the letter, that and housekeeping.

Q. And the letter specifically states unless he remedy the situation, through proper procedures, his lease would be terminated; is that correct?

A. The letter relates to a lease violation of purpose and use of the premises, that he was doing things that for the purpose of use of a service station were contrary to good business principles and practice.

Q. They were contrary to what Atlantic considered good business practice?

A. What the dealers themselves think, too.

Q. Did Mr. White increase his hours of operation?

A. Yes, he did.

Q. And his lease was not terminated?

A. No, corrections were made within the 15 days.

Q. You were also asked some questions concerning new percentage lease. Isn't it true that under that new lease, Atlantic also gets a return on gross sales of TBA by the dealer under a specific schedule?

3344 A. Yes.

Q. You also testified on direct with respect to many of the reasons why there is a drop in gallonage when a lessee dealer leaves a station. Among other things, you said that a dealer builds up good will. Do you recall that testimony?

A. Yes.

Q. And then when he does so, it is not transferrable,

and that was one of the reasons for the drop in gallonage. Does Atlantic reimburse the dealer for good will under any circumstances?

A. No, good will is something you can't gauge, as to the value of dollars it may have for the outgoing dealer.

Q. On direct examination you also referred to the capital investment by an Atlantic dealer and you stated that \$1,000 was the minimum. Now isn't it also a fact that Atlantic's investment of course is substantially greater in all of its lessee stations?

A. Yes, it would in the case where we had a prospect with a minimum, absolute minimum of \$1,000, our investment would be more.

Q. In other words, you would have the cost of building the station and cost of the property, and other expenses of that type?

A. Oh, yes, sure.

Q. So that your investment in 94 stations would 3345 run into the millions of dollars, would it not?

A. I imagine it would.

Q. And isn't part of your responsibility as district sales supervisor to see Atlantic gets a return on that investment?

A. Well, by promoting the sales of petroleum products, through good lessee operation, naturally the return on the investment will be more.

Q. And isn't it a fact the more Firestone TBA you sell through those stations, the more return Atlantic gets on the investment?

A. Yes, that is true.

Q. On direct examination you stated that jobbers or TBA sellers other than Firestone, have no interest or no loyalty, to an Atlantic dealer, and you gave that as one of the reasons why you felt that the dealer should handle Firestone TBA. Is that correct?

A. Well, when I say no loyalty, I mean that they have no loss involved, directly with them or the companies they represent.

Q. In what respect?

A. Well, in my own experience, I have seen it happen, where jobbers will come in and over-stock a dealer, in some item, that although it is attractive in price, it has a short span of interest to the customers, and they will 3346 over-stock him to the place where he has much too much money invested in those things.

Q. You are not implying that all competing sellers of TBA in your district attempt to over-stock Atlantic dealers?

A. No, I am not implying that.

Q. Isn't it a fact that there are many sellers of TBA who have just as much interest in the success of their customers as Atlantic might have or Firestone might have?

A. No, because if they lose a customer, or a dealer, Atlantic has the responsibility of first finding that man, which is expensive. They have a responsibility of training him, which is expensive. He has been put into a station and they, upon no cost to them, have assumed another customer, if they can begin to sell him.

Q. For that reason you feel Atlantic dealers have an obligation to purchase Firestone TBA?

A. No, no obligation.

Q. For that reason do you feel that Atlantic has a right to expect its dealers to purchase Firestone TBA?

A. Not unless we can offer them quality lines at competitive prices, I wouldn't expect a dealer to buy from us.

3347 Q. Isn't it a fact that Atlantic dealers can buy products which are competitive as to price and quality from jobbers who give comparable service to that of Firestone?

A. Will you phrase that again?

(The reporter read the pending question.)

The Witness: Well, in practice, if they find they can, they will and do buy from other jobbers.

By Mr. Kelaher:

Q. Isn't it a fact that Atlantic dealers have complained to you about the poor service of Firestone stores in the Wilmington area?

A. We have gotten complaints and sometimes on occasion from outlying areas where the routing isn't what the dealer thinks he should get, or the truck doesn't get there as often during the day.

Q. And haven't you had complaints from Atlantic dealers closer in than that with respect to the poor delivery of Firestone stores?

A. No, I have not.

3348 By Mr. Kelaher:

Q. You also made the statement on direct examination that credit card customers have made complaints as to merchandise bought in Atlantic stations. You are not implying, are you, that complaints come in from credit card customers with respect to all competing TBA, other than Firestone, that is purchased from Atlantic stations?

A. No, I made the statement that credit card customers do complain about merchandise they have bought in Atlantic stations.

Q. But is that—you are not saying that—

Mr. Fred Ballard (interposing): Your Honor—

Mr. Kelaher (interposing): I have a right to cross-examine.

Mr. Fred Ballard: You have no right to interrupt him.

Mr. Kelaher: I thought he had finished.

The Witness: I have specific cases in mind that I have

been aware of and have been associated with as a salesman and supervisor, where we have gotten letters from the Philadelphia office outlining complaints on merchandise purchased on credit card sales.

3349 By Mr. Kelaher:

Q. How often does that happen?

A. Perhaps two or three times a year.

Q. On your direct examination you said it happens very often. So that would be what you are referring to?

A. That would be very often.

Mr. Fred Ballard: I am sorry to keep objecting. I don't think he said that.

Hearing Examiner Kolb: The witness can take care of himself.

The Witness: Three or four times a year would be very often for a salesman in one territory handling only 20 accounts.

By Mr. Kelaher:

Q. I might add my notes show you did say very often.

You also referred to other competitors of Firestone in the Wilmington area. You named two, or mentioned two major concerns. Would you name those again?

A. Wilco Supply Company is a concern that handles both tires, batteries, and accessories.

The other is Lee Tire and Rubber Company.

Q. You also mentioned five tire companies.

A. Then, you have the tire companies, where tires are primarily their one item. You have Central Tire Company, Delaware Tire Center, Kiels General Tire, and Coopers.

3350 Q. And Kiels is the Goodyear distributor in the area, is he not?

A. Yes.

Q. And it is an extremely large distributor, is it not, of Goodyear tires?

A. I think he is. I am not that acquainted with him.

Q. Now, you also made some reference to suppliers who sell out of trucks. You said there was an untold number, which comes as somewhat of a surprise, because that is the first we have heard of that type of seller in that area. What did you mean by an untold number?

A. Well, we have a nick-name for them, for lack of anything better, they are called bobtailers. They have an automobile, or a panel truck, and usually they sell one, two, or perhaps three fast moving items, something that is popular at the moment. They will come into a station, sell it, out of the back of the car, take the dealer's money, and they are on their way. It is very popular among people in that business, or in my conversations about meeting them in that business, that they just work up and down the East Coast. They have no one central area.

Q. How many did you mean by an untold number?

A. Twenty-five or thirty. I have no way of counting them.

Q. Are you basically opposed to that type of jobber, selling to Atlantic dealers?

3351 A. Yes, I am.

Q. And don't you think that type of seller has a right to peddle his wares, wherever he can?

A. Yes, he does. May I elaborate on why I have an objection?

Q. You go ahead and elaborate.

A. We recently had one within the past couple of years of key machines, where a guy came through with a panel truck selling a machine to make keys.

Mr. Kelaher: I will object to any further discussion of keys. That is getting afar afield.

The Witness: All right.

By Mr. Kelaher:

Q. I judge from your answer, when you talk about this 25 or 30, you are talking about various types of these bobtailers who sell various kinds of products, including key machines and various things?

A. It is mostly something that is tied in with the accessories' line of the business.

Q. Do you have the deferred credit card payment plan in effect in your area with respect to TBA?

A. Yes, we do.

Q. Is that limited to Firestone TBA only?

A. No, that is any brand of TBA that the dealer is selling.

Q. At one time was it limited to Firestone TBA only?

3352 A. Not to my knowledge.

Q. Not in your area, at least?

A. Not in my area nor to my knowledge since I have been with the company.

Q. You also testified on direct as to two types of inspections, which are conducted by Atlantic, one from the main headquarters in Philadelphia and the other from the regional headquarters. You referred to them as customers shopping inspections; is that correct?

A. I think they have been referred to also in this case as phantom inspections.

Q. That was the question I was about to ask.

On direct examination you got into a discussion with counsel concerning the price of Firestone tires in comparison with other tires. You implied, if you did not state directly, that lesser known brands could be purchased at lower prices than Firestone.

A. That is true.

Q. And correct me if I am wrong, but I believe you

stated that these lower priced tires were not as popular as Firestone. Is that correct?

A. That is true, they are not as popular.

Q. Are you familiar with the prices on Lee tries?

A. Not without checking or cross-checking price lists I couldn't tell you within the dollars what the prices are.

3353 Q. I don't mean within the dollars. Isn't it a fact that the price of Lee tires is lower than Firestone tires and has been for some time?

A. Without checking price lists I couldn't say.

Q. Then, how could you answer that the prices of some tires were higher than others?

A. I am thinking of two brands that are popular, Vanderbilts and Coopers, that are two very low-priced tires.

Q. And was your answer limited to Vanderbilt and Cooper tires?

A. When I spoke of the low-priced tire, I was thinking of that type of tire, yes.

Q. And you were not implying that other tires could not be purchased at lower prices, which were like grade, quality with Firestone, were you?

A. No.

Q. Isn't it a fact that Atlantic dealers handled Lee tires for many years prior to the change-over to Firestone in your area?

A. Yes, they handled Lee, and still do.

Q. Isn't it true Lee has a road hazard guarantee, which Goodyear does not and for that reason is popular with consumers in that area?

A. You said Goodyear. You mean Firestone.

Q. Yes.

3354 A. Firestone has a guarantee that is interpreted as the same thing.

Q. When did that come into effect?

A. They have a guarantee that the tires are guaranteed

1956

*Transcript of Proceedings.*

against workmanship or material for the life of the tire and for most occasions, the guarantee is just as good.

Q. For most occasions, but it is not the road hazard guarantee of the Lee tire, is it?

A. No, it doesn't have the road hazard guarantee of hitting a rock or curb.

Q. Now, I would like to have you turn your attention to the testimony concerning these various dealers, or ex-dealers of Atlantic, who testified in Wilmington. As stated by counsel, you were present during all those hearings, as I recall!

A. Yes.

Q. Now, when Mr. Brown testified as to May 1956 you stated you were a promotable dealer salesman; is that right?

A. Mr. Brown went out in May of 1957.

Q. Yes, but you were asked a question about May 1956 and at that time the record shows you were a promotable dealers salesman, without getting to the next step.

A. I was asked about Brown's conversation, which was May of 1957.

Mr. Kelaher: I withdraw the question then.

3355 By Mr. Kelaher:

Q. Mr. Brown went out in April 1957, according to the record. Now, were you aware of arguments between Mr. Brown and Firestone stores concerning prices, prior to that time?

A. Not arguments on prices, no.

Q. Were you aware of the fact that the Firestone store would at times quote him one price and charge him a higher price upon delivery? Did he make complaints of that type?

A. He made no complaints to me whatsoever of that type.

Q. However, you did not become the sales supervisor until a few months prior to the time—

A. (Interposing.) December of 1956.

Q. Were you aware of the fact that Mr. Brown had complained of poor service of Firestone?

A. Not to me.

Q. Were you aware of the fact that Mr. Brown had complained of the competition he was getting from Firestone stores as to price?

A. I received no complaints from Mr. Brown on TBA whatsoever.

Q. You stated on direct examination, as I recall, and you can correct me if I am wrong, that Mr. Brown was on a COD basis, so to speak, with Firestone, and you implied that was the reason why he was not buying Firestone. Was that the intent or import of your testimony?

3356 A. Well, they had had such poor credit relations with him in his two years as an Atlantic dealer that they just wouldn't sell him anything unless he agreed to pay when delivered.

Q. Isn't it a fact that Mr. Brown was completely dissatisfied with his purchasing from Firestone, TBA from Firestone stores, and that was the reason he wanted to purchase elsewhere?

A. He made no such statements to me whatsoever.

3357 Q. You stated you do recall the conversation with Mr. Brown sometime in or about April, 1957, concerning the termination of his lease?

A. At the end of March, yes.

Q. Do you recall where that conversation took place?

A. In the service station.

Q. Do you recall that after that conversation you again called Mr. Brown? Do you recall that?

A. I do not, no.

Q. Do you recall on that next conversation you told him you were just kidding? Does that refresh your recollection?

A. No, I wasn't kidding. There was no calls after that saying that I was kidding.

Q. And you deny you made that statement to him, as I understand your testimony now?

A. Yes, I do.

Q. Now getting <sup>on to</sup> of John Galle. You stated on direct examination he could buy Firestone tires at 20 cents cheaper per tire than Goodyear tires. Is that correct?

A. With the volume discount he had at the time he could.

Q. And on direct examination I don't believe you mentioned volume discount, but I wanted to ask you about that. Isn't it a fact he would have to purchase in volume to get that cheaper price?

A. Not always.

3358 Q. But isn't it a fact that in most instances he would have to buy in volume to get a cheaper price than he would have then been able to get from Goodyear?

A. No, because Mr. Galle was enjoying the best volume price he could get as a lessee dealer at the time we were comparing price.

Q. Mr. Galle stated if he bought one or ten tires from Goodyear, he would get a certain price, but he had to buy ten, fifteen, twenty, or whatever, to get the lower price from Firestone. Is that a fact?

A. No, that is not a fact.

Q. What is your statement with respect to price now? Do you state that if he bought one tire or ten to fifteen or twenty tires, he would get the same price from Firestone?

A. Yes, sir, he would.

Q. A few minutes ago you said if he took advantage of his volume discount he would get a lower price.

A. Volume discount is not volume on a certain number of units, but the volume that the station would fall into in a classification over a period of a year. In other words, from zero up to a certain number of dollars they had a certain volume discount and over that they went into another volume discount.

Q. But the price you are talking about as being cheaper than the Goodyear price is the volume price, isn't it?

3359 A. I don't recall now what Mr. Galle's volume price was, but the price that he was being invoiced at the time we had our conversation compared to the price list he had in his possession, was what we were using to base the fact that he could buy Firestone 20 cents cheaper per unit.

Q. My question is: Your answer is accurate if he did purchase a specific volume of tires, isn't that right?

A. No, he was already in the classification; whether he bought one tire or 50 or none, he still had the classification assigned to him.

Q. What classification was he in, do you recall?

A. Most of our dealers, in fact all of them, were in the B classification, which is the best you can get for a service station.

Q. And your statement is that that is a better price than the similar C classification for Goodyear tires?

A. At the time it was 20 cents on the unit cheaper.

Q. In any event, as a result of your conversation with Mr. Galle, he did not purchase the Goodyear tires, did he?

A. He purchased them for the one particular customer.

Q. But he did not stock them?

A. No, he didn't.

Q. Now getting down to Mr. Parag, on direct examination you stated that he couldn't get Firestone TBA, is that right?

A. He couldn't get it on credit.

1960

*Transcript of Proceedings.*

3360 Q. He couldn't get it on credit?

A. Yes, sir.

Q. Were you his promotable dealer salesman at that time?

A. Yes.

Q. And are you aware of the fact that he carried Firestone TBA from August 1955 to December 1955?

A. If he did, he paid cash for it when he bought it.

Q. I am not asking you how he paid for it. He did carry Firestone TBA at that time, didn't he?

A. Well, he carried Firestone TBA up until the time he left.

Q. You made the broad statement that the reason he wasn't carrying Firestone was because he couldn't get it. So that was inaccurate, was it?

Mr. Ballard: Now, your Honor, I don't mind him characterizing, but I am not sure that is what he said. Could we find out what the record said on that?

Hearing Examiner Kolb: They wouldn't give him credit is the reason he couldn't buy it.

By Mr. Kelaher:

Q. As a matter of fact, he was buying Firestone TBA, you say, during all the time he was there?

A. He was also buying Goodyear.

Q. But he didn't start buying Goodyear until about December 1955?

A. He bought Goodyear the third day he was in the station.

3361 Q. Did he stock Goodyear?

A. Yes.

Q. And do you know or don't you know that he had no credit problems with Kiels, with respect to Goodyear TBA, did he?

A. I don't know what basis he was buying from Kiels, whatsoever.

*Testimony of Thomas E. Jones.*

1961

Q. With respect to Mr. Thomas J. Sullivan, Mr. Sullivan testified that when he became an Atlantic lessee dealer he received a \$3,000 loan from Atlantic. If you know, would you state whether any part of that was used to stock his station with Firestone TBA?

A. I don't know how that was spent. It could have been for gasoline and equipment, and he could have bought his own TBA out of the money he started with. I wouldn't have any way of knowing how the break-down on the money was used.

Q. It is possible it may have been used in part at least for the purchase of Firestone TBA, is that correct?

A. For his station, it would take more than that to buy the gasoline, motor oil, and equipment, so I assume the TBA he bought himself.

Q. Did you ever make loans to Atlantic lessee dealers in the form of TBA stock?

A. Petroleum products we make loans for.

Q. How about with respect to Firestone TBA?

A. Do you mean that we pay the TBA—

3362 Q. In other words, you would advance a certain amount of TBA, Firestone TBA, to a new dealer. Do you make loans of that type?

A. Well, we make a loan to cover the cost of going into business. The gasoline is purchased, the motor oil is purchased, and TBA, the dealer purchases, the equipment he purchases, and the total of everything that he has purchased is added up, and the amount of our loan is deducted and he gives us a check for the balance. That is the procedure.

Q. So in some instances you may loan him the entire amount and in others, part of the amount. Is that what you mean?

A. Except we don't violate the thousand dollars minimum. He must have that.

Q. He always has to have the thousand dollars minimum?

A. That is right.

Q. How high do your loans go to dealers?

A. Well, we have a policy, it is 80 percent for a trained dealer. So if he has one, we can give him a maximum of four.

Q. If the total amount of investment, capital, was five thousand dollars, you would give him four thousand dollars? (sic.)

A. We could loan him four, if it was warranted.

Q. Is that a normal practice?

A. Not to go that high.

Q. Is it normal to give loans of that type to incoming dealers?

A. Oh, yes, yes, sir.

3363 Q. And are any of such loans interest-free?

A. No, they are not.

Q. What interest do you charge?

A. Five percent.

Q. Now with respect to Mr. Edgar Cornman, were you his promotable dealer salesman when he was in his station?

A. When he left I was, yes.

Q. Would you explain that a little more? I mean as the time period when you were his promotable dealer salesman.

A. When I was a promotable dealer—

Q. Salesman, for him.

A. Oh. Well, he left, let's see—I am trying to think. The fellow that replaced him went to school with Norris Stein, they graduated at the same time. It would be late 1954.

Q. And were you the promotable dealer salesman for Mr. Miller? Was that Robert Miller?

*Testimony of Israel Gloth.*

1963

A. Robert Miller. Yes. He was replaced by Mr. Stein.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no questions.

Hearing Examiner Kolb: That is all, thank you.

(Witness excused.)

Hearing Examiner Kolb: The meeting will adjourn until ten o'clock tomorrow morning.

3365 Hearing Examiner Kolb: The hearing will be in order.

ISRAEL GLOTH was called as a witness for the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

*Direct Examination.*

Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Israel Gloth. My home address, 19 Shknollwood Street, Springfield, Massachusetts.

Mr. Ballard: Your Honor, before proceeding with this witness, I thought I might do the same as I did yesterday and explain the witnesses that will be appearing this morning are dealers from the New England region of Atlantic. They are not dealers whose names I think have previously appeared in the record.

Hearing Examiner Kolb: All right.

By Mr. Ballard:

Q. Now, Mr. Gloth, in answering my questions, the primary purpose is that the Examiner may hear you, and also Mr. Kelaher, representing the Federal Trade Commission, and the reporter must hear you, so try to keep your voice up.

3366 You are, I believe, the lessee of an Atlantic station?

A. Yes.

Q. And what is the address, location of your service station, sir?

A. 1032 Dwight Street, Springfield, Massachusetts.

Q. Is that known sometimes as Dwight and Carew Streets?

A. Yes.

Q. And how long have you leased that station from Atlantic, sir?

A. Since 1934.

Q. Do you presently have a three-year lease?

A. Yes.

Q. Now in addition to gasoline and other service station services, do you also sell tires at your station?

A. I do.

Q. Would you say that tires was an important part of your business?

A. Yes, it is.

Q. What brands of tires do you sell?

A. I sell Firestone, Goodyear, and I sell Lee tires.

Q. Could you give us an indication of the percentage of each that you sell, about?

A. Well, I sell about one-third of each brand. It is about evenly divided.

3367 Q. Now, where do you buy your Goodyear tires, sir?

A. I get those from two sources. One of them is the Goodyear store—Springfield, and the other—that is run by Goodyear—and the other is Rucki's, of Chicopee. They are a distributor of Goodyear tires. Chicopee is about three miles from Springfield.

Q. Are those both supply points for Atlantic stations?

A. Yes, as far as I know.

Q. Where do you buy your Firestone tires, sir?

A. I get most of those from the Firestone Tire Center in Springfield.

Q. And Lee tires?

A. From the Lee Rubber & Tire Corporation, factory branch, in East Hartford, Connecticut.

Q. Do you also sell batteries at your station?

A. Yes.

Q. And what brand are you selling today?

A. Goodyear.

Q. And how long, approximately, have you been selling Goodyear?

A. Well, I think it must be at least about two years.

Q. What brand were you selling before then, sir?

A. Well, previous to that I was selling Perrine batteries.

Q. That is a battery made in the Boston area?

A. It is made in Waltham, Massachusetts, yes.

3368 Q. What was your reason for switching from Perrine batteries to Goodyear batteries?

A. Well, the local distributor in Springfield, of Perrine batteries, left his connection with the company, and he was not immediately replaced. It was during the fall of the year, I think, and the battery business was fairly good and I had to get another source of supply, so I had to drop the Perrine line. There was no representative at that time.

Q. Did Goodyear offer you the best other line, proposition?

A. At the time, yes, they did.

Q. Where do you buy the accessories you sell at your station?

A. I buy most of them from the Albert Automotive Supply in Springfield, and I buy some from the Tarbell-Waters Company in Springfield.

Q. Mr. Gloth, do you recall that a number of years ago Atlantic was selling Lee tires?

A. Yes, they were.

Q. At that time, did you buy Lee tires from them?

A. I did.

Q. Where were those tires delivered to you from?

A. From the Atlantic warehouse, in Springfield.

Q. That was run by Atlantic?

A. Yes.

Q. And do you recall that Atlantic stopped selling  
3369 Lee tires and began to sponsor Goodyear tires?

A. I remember that, too.

Q. Sir, I show you a copy of Commission Exhibit 150, which is a form letter dated March 1, 1951, entitled "A statement of Atlantic's TBA policies" and it is on the letterhead of Mr. Colley, the vice president of Atlantic. Do you recall receiving a letter in that form?

A. Yes, I remember getting a letter.

Q. In that form?

A. Yes.

Q. I show you also a letter marked Commission Exhibit 206, also on Mr. Colley's letterhead, dated August 28, 1952, a restatement of Atlantic's TBA policies and ask you if you recall receiving that letter? A letter in that form?

A. I remember receiving that, the same letter.

3370 Q. Finally, I show you a letter, dated June 24, 1955, that is marked Commission's Exhibit 207, and this letter was on the letterhead of the manager of the Philadelphia-New Jersey region. If you had received one, it would be on the letterhead of the New England region. Will you tell me if you received a letter in that form from the manager of the New England region?

A. I remember receiving a letter like that.

Q. Do you happen to remember the name of the manager of the New England region?

A. It was Harrold W. Jollie.

Q. Now, Mr. Gloth, do you, on occasion, advertise the tires that you have for sale at your station?

A. Yes.

Q. Where do you generally run those advertisements?

A. Well, in the two Springfield newspapers, The Springfield Union, and The Springfield Daily News.

Q. Do you run both of your advertisements in both papers?

A. It is automatically run in both. They are run by the same company.

Q. Have you ever advertised on television or radio?

A. Yes.

Q. Which one, sir?

A. I have used both, on different occasions.

Mr. Ballard: Would you mark these documents for 3371 me for identification.

Hearing Examiner Kolb: They may be marked Respondent Atlantic Exhibit 19-A through -F for identification.

(Whereupon, the documents referred to were marked Respondent Atlantic Exhibit 19-A through -F for identification.)

By Mr. Ballard:

Q. Mr. Gloth, I show you documents which have been marked A-19-A, -B, -C, -D, -E, and -F for identification. They are photostatic copies. Could you tell me whether those are copies of advertisements that you have run in the papers you described?

Mr. Kelaher: Off the record, please.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Will you answer the question, please?

A. These are the advertisements I ran in those papers.

Q. Have you also run other advertisements in addition to these?

A. Yes, I have.

Q. Look, if you will, sir, at the first sheet, A-19-A. Can you tell me approximately the year in which that advertisement was run?

3372 A. I think it was in 1952 or it may have been in 1953.

Q. A-19-B, has on it the date 4/22/54. Is that about the time that advertisement appeared?

A. Well, I have an exhibit marked -B and another one marked -C. They are identical ads, and one is dated 4/15/54 and one is dated 4/22/54.

Q. Which one is marked 4/15/54?

A. They are both exactly the same ad. One is dated the 15th and one the 22nd.

Mr. Ballard: As far as I am concerned, I will withdraw -C.

Hearing Examiner Kolb: Let the record show Exhibit A-19-C is withdrawn.

By Mr. Ballard:

Q. Now, let's look at Exhibit A-19-D, which is an exhibit of Lee tires, and it is dated 4/27/54. Is that the approximate date that was run?

A. Yes. Here is the date up here, to verify it.

Q. Right. A-19-E is an advertisement with a picture of a monkey on the top. I hope that isn't suggestive of anything to anybody here. Can you give us about the date that was run?

A. That was run in 1952, or it might have been 1953.

Q. And finally, A-19-F is an undated advertisement of

a carload tire sale, and a picture of your station at 3373 the top. Can you give us about the date that was run?

A. That was run at about the same time as the others, 1952 or '53.

Q. Now, in addition to advertising those, running those advertisements, do you also display the Firestone and Lee tires in your station?

A. Yes.

Q. And do you also have a sign or have you on occasion had a sign on your station advertising the Firestone and Lee tires?

A. Yes, I have.

Q. Has your Atlantic salesman ever told you to stop buying the Firestone and Lee tires?

Mr. Kelaher: Objection, your Honor. I am going to object to the form of the question. I think it is leading. I haven't objected strenuously heretofore, but I think we can frame the questions a little better in this hearing.

Mr. Ballard: Your Honor, I don't think that is an unduly leading question under the circumstances, and I may say it has been used in these proceedings without objection many, many times. It seems to me a late date for Mr. Kelaher to get on his high horse on that particular question.

Hearing Examiner Kolb: The objection will be overruled.

3374 By Mr. Ballard:

Q. Have you ever been told to stop buying Firestone and Lee tires?

A. No, never.

Q. Have you ever been told to remove them from the station?

A. No.

Q. Have you ever been told to hide them?

A. No.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Are you going to offer the advertisements in evidence?

Mr. Ballard: Yes, sir. I offer Atlantic Exhibit A-19-A, -B, -D, -E, and -F in evidence.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibit A-19-A, -B, -D, -E, and -F.

(Whereupon, the documents, heretofore marked ATLANTIC EXHIBIT 19-A -B, -D, -E, and -F for identification, were received in evidence.)

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Gloth, just to get the record straight, Springfield, Massachusetts, is in the Springfield district of the New England Region under Atlantic's set-up, is it not?

3375 A. Yes.

Q. There are quite a number of Atlantic stations in that area, are there not?

A. Yes, there are.

Q. Now, you began operating as an Atlantic lessee in 1934, is that correct?

A. That is right.

Q. And have you been at the same location all these years?

A. Yes, I have.

Q. And when you first began operating in 1934, was TBA considered an important part of service station operation?

A. I don't think so.

Q. Isn't it true that it assumed larger proportions after World War II than before World War II as an important part of service station operations?

A. Well, I can't honestly answer that question. I don't know enough about it.

Q. I am talking about in your business.

A. Well, I have done more after World War II with it than I did before, but I don't know whether that is representative of the other stations.

Q. I am just asking about your station.

A. Yes, I have done more.

Q. Now, when did you first begin to handle Lee tires?

A. I began to handle Lee tires when the Atlantic 3376 Refining Company became a distributor of Lee tires.

Q. And you continued to handle Lee tires from that time or at that time, rather, you began to purchase them from the Atlantic warehouse in Springfield; is that correct?

A. Yes.

Q. And then do you recall attending the dealer meeting in the New England, or in the Springfield district concerning Atlantic's change-over to the Goodyear TBA line?

A. Yes, I remember that.

Q. Where was that dealer meeting held, and who was present?

A. I am trying to remember the place where it was held. I think it was one of the hotels.

Q. The city would be fine.

A. In Springfield.

Q. Were Atlantic dealers present?

A. Yes, we had a big turn out.

Q. Big turn out of Atlantic dealers from the Springfield district?

A. Yes.

Q. Were Goodyear and Atlantic personnel present?

A. Yes.

Q. And what transpired at the meeting?

A. Well, they explained to us that the Atlantic Refining Company would, in the future, sell Goodyear tires and batteries to us instead of Lee tires, and they also 3377 explained that instead of warehousing the tires at the Atlantic warehouse, the local Goodyear distributor would warehouse the tires and deliver them to us. And they said that the Atlantic salesman would call on us or sometimes it would be a Goodyear man, but they were going to discontinue the Lee tire franchise.

Q. At that time did they discontinue the sale of Exide batteries, also, and the line of accessories they were handling?

A. I think they did.

Q. Did you handle Exide batteries back at that time?

A. Yes, I handled Exide batteries.

Q. Did you purchase some accessories from Atlantic, such as Thermod fanbelts and other items?

A. Yes, I did buy some from them.

Q. And Fram filters?

A. Yes.

Q. Now shortly after that meeting was a call made on you by an Atlantic salesman along with a Goodyear representative!

A. I don't remember that.

Q. Do you remember whether an Atlantic salesman came in later and talked to you about the matter?

A. Oh, yes.

Q. What was his name?

A. If I remember correctly, at that time the salesman who called on me was Charles Parker, but I am not absolutely sure of that.

Q. That is all right. At least the Atlantic salesman

3378 came in, and at that time did a Goodyear man later come in, or someone from the Goodyear store in Springfield come in to see you?

A. Oh, yes, I have seen Goodyear representatives from time to time.

Q. I am talking about this time of the change-over. Of course, you had calls on you by the Springfield store, Goodyear store then, did you not?

A. I might have had calls from the Goodyear representative, but I don't remember definitely that I did.

Q. At that time, after the change-over, did you begin to purchase from the Goodyear service store in Springfield?

A. No, I didn't.

Q. You didn't at that time?

A. No.

Q. Did you purchase Goodyear tires shortly after that time?

A. From any stores, you mean?

Q. From any stores?

A. Yes, I did.

Q. Who did you purchase the Goodyear tires from?

A. I purchased Goodyear tires from the Interstate Tire Stores in Springfield.

Q. At that time, after the change-over from Lee to Goodyear—let me ask you this first: Prior to the change-over was your principal stock of tires Lee tires?

3379 A. Yes.

Q. And at that time were you carrying any stock of Goodyear or Firestone?

A. Yes, I did.

Q. Were they in smaller quantities than your Lee stock?

A. I think at that time they were.

Q. Now, after the change-over, did your purchases of Goodyear tires increase, after the change-over by Atlantic to the Goodyear TBA line?

A. Not immediately, no.

Q. Did they shortly after the change-over? How soon after the change-over did your purchases of Goodyear tires increase?

A. It was a few years after the change-over.

Q. And was that when you started to purchase from the Springfield Goodyear service store?

A. No, I started to purchase from the Goodyear service store this year, for the first time.

Q. And prior to that, were your purchases from Interstate Tire Company?

A. They were very minor, because I didn't sell very many Goodyear tires at all at that time.

Q. I see.

A. I sold a few. I featured Lee tires.

Q. Did you have a window valance with Lee on it at that time, or an outdoor pole sign with Lee on it?

3380 A. I don't think I did.

Q. Did you have any service station identification in your station as to tires?

A. You mean before the change-over?

Q. Yes, before the change-over.

A. I don't think I had any. I might have had some Lee signs, but I don't think I had any permanent Lee signs.

3381 Q. Do you have any window valances now?

A. No.

Q. Do you have any Goodyear signs on your premises?

A. Yes, I do.

Q. A Goodyear outdoor pole sign?

A. I have one Goodyear sign attached to a floodlight pole.

Q. Yes, that is the so-called Goodyear pole sign. When was that placed on your premises?

A. I don't remember.

Q. Was that sometime ago?

A. It was more than a year, I know.

Q. It was after Atlantic changed over to the Goodyear TBA line, was it not?

A. Yes.

Q. Are you familiar with, from your observation, have you seen the other Atlantic stations in your area or district?

A. Yes, I have seen them.

Mr. Ballard: I will let that answer stand, but before you answer the next question, I might want to object to it.

By Mr. Kelaher:

Q. Based on your observation of Atlantic stations in that area, isn't it true that the Goodyear window valances and outdoor signs predominate in Atlantic stations?

Mr. Ballard: Now, sir, I object to that question on the ground it goes beyond the scope of direct examination. 3382 This man was not put on the stand to testify about what other Atlantic stations do in the area. If Mr. Kelaher wants to call him for that purpose, it is a different matter.

Mr. Kelaher: They are calling this witness as a typical dealer from the New England region. I think I have a right to go into the question of how typical he is, and develop facts concerning the area in which he sells. I don't see where that is irrelevant or immaterial.

Hearing Examiner Kolb: Is he offered as a typical witness?

Mr. Ballard: Your Honor, he is offered as an Atlantic witness who carries—to demonstrate his own state of mind, not as a typical witness.

Hearing Examiner Kolb: It seems to me your attempt to show the course of conduct among the stations, and I assume this man would be presented as typical of how the stations are operated and what they do.

Mr. Ballard: Your Honor, I don't think I can choose or find a typical Atlantic witness. I can find witnesses of which this man is an example—

Hearing Examiner Kolb: But you expect me to find from the witnesses you produce that the others are probably about the same thing.

Mr. Ballard: Your Honor, on that basis, I would be delighted to have him answer the question.

3383 By Mr. Kelaher:

Q. You may answer.

A. Would you repeat the question, please.

Hearing Examiner Kolb: Read the question.

(The reporter read the question as follows: "Based on your observation of Atlantic stations in that area, isn't it true that the Goodyear window valances and outdoor signs predominate in Atlantic stations?")

A. I don't think they predominate.

By Mr. Kelaher:

Q. You say you don't think they predominate?

A. No.

Q. Isn't it true that Atlantic service stations in that area have the Goodyear window valance on the windows?

A. Some of them have, yes.

Q. Isn't it a fact that the majority of them have?

A. I can't answer that question.

Q. And isn't it a fact that the Atlantic service stations in that area have signs similar to yours, on the premises, the outdoor, Goodyear outdoor pole sign?

A. I think a good many of them have the outdoor pole

sign. That is the only Goodyear sign I have, is that outdoor pole sign.

Q. That is the only one you have. But isn't it a fact that the majority of Atlantic service stations in your 3384 area have a Goodyear outdoor pole sign, or they don't have any sign; is that right?

A. I haven't observed that closely. I can't say that; I can't answer that.

Q. You have seen Goodyear outdoor pole signs in Atlantic service stations?

A. Yes.

Q. You haven't seen Lee outdoor pole signs in your area, have you?

A. No.

Q. And you haven't seen outdoor Firestone pole signs in your area, in Atlantic stations, have you?

A. No, I don't remember seeing them.

Q. And you haven't seen outdoor pole signs of any other brand on Atlantic stations in your area, have you?

A. I can't remember, I spend so much time in my own station, I don't have too much chance to see the other ones.

Q. You have been in business for 24 years, so I assume you have seen some Atlantic stations?

A. That is right, but I have been in business mostly because I stay in my own station.

Q. I am not too clear on your testimony about the signs, Respondent's Exhibit A-19-A through F, in some respects.

A. As I understand your testimony, these exhibits, 3385 19-A for example, was run in 1952 or 1953. Is that right? (Handing document to the witness.)

A. Yes.

Q. Now, with respect to Respondent's Exhibit 19-A, B, and D, E, and F, the last one of these was run in 1954, I believe you testified. Was that right?

A. One of them was.

Q. Now, is it your testimony that you have continued to run these ads to date?

A. No, I am not running ads now as frequently as I used to.

Mr. Kelaher: No further questions.

*Redirect Examination by Mr. Ballard.*

Q. Mr. Gloth, returning to the dealer's meeting, at the time Atlantic began to sponsor the Goodyear brand, in the course of that meeting did the Atlantic representatives state to you that the program was a voluntary one?

A. Yes.

Q. Mr. Gloth, I show you these two pictures and ask you if these are pictures of your station?

A. Yes, they are.

Q. Now when were these pictures taken, sir?

A. Probably about three weeks ago.

Q. Were they taken on the occasion of the visit of one of my associates to your station?

3386 A. Yes.

Q. At that time did you have displayed along the wall of your station a sign reading "See Gloth for Good-year or Firestone tires, batteries, wholesale discounts"?

A. Yes, I had that sign.

Q. Did you at that time have a display of eight Firestone tires in front of your station?

A. Well, I had eight tires there. I don't know if they were all Firestone tires, but some of them were.

Q. Were two of them in a Firestone stand?

A. Yes.

Mr. Ballard: No further questions.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

Hearing Examiner Kolb: We will take a short recess at this time.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

HAROLD F. McCARTHY was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

3387 Hearing Examiner Kolb: Give your name and address to the reporter.

The Witness: Harold F. McCarthy.

*Direct Examination by Mr. Ballard.*

Q. Mr. McCarthy, you are the lessee of an Atlantic service station, are you not?

A. Now, yes.

Q. Where is that station located, sir?

A. Belgrade Avenue, Roslyn Dale, Massachusetts.

Q. That is near Boston?

A. Just the other side, about seven miles or so.

Q. Now you have occupied that Atlantic station in two separate stretches, is that correct?

A. Yes, sir.

Q. What were the years you occupied that station?

A. I was there eight years, then I left and came back after five years, came back here, and I am back now four years.

Q. In other words, you have been there since 1952?

A. Yes.

Q. During that five years between times, what were you doing?

A. I was with the Texaco company.

Q. Were you operating a service station?

A. Yes.

3388 Q. Did you lease that service station from Texas?

A. Yes, I did.

Q. That would be five years, 1947 to 1952?

A. Let's see, four years I am back.

Q. That would be 1954, you have been back since about 1954?

A. Around there, yes.

Q. And you were with Texas about five years previous to that. And you were with Atlantic eight years previous to that?

A. Yes.

Q. Was your Texas station near your present Atlantic station?

A. About a block away from it.

Q. When you moved from your Texas station to your Atlantic station, did your customers come with you?

A. Right back with me, yes.

Q. Now, sir, what kind of tires do you sell?

A. Firestone, Goodyear, Kelly-Springfield, anything that the man wants, we get for him.

Q. If the man doesn't ask for a particular brand, what brand do you offer him?

A. Firestone.

Q. What brand did you sell at your Texas station?

A. Firestone.

Q. Where did you first become acquainted with 3389 the Firestone brand?

A. I worked for them for about fifteen years.

Q. Now, sir, are the Firestone tires visible in your station?

A. Yes, sir.

Q. Does your Atlantic salesman know they are there?

A. Oh, yes.

Q. Did he ever tell you to take them out of the station?

A. No, sir.

Q. Or to hide them?

A. No, he did not.

Mr. Ballard: I don't think I have any further questions.

*Cross-Examination by Mr. Kelaher.*

Q. I just have a few questions, Mr. McCarthy. Roslyn-dale, as you stated, is in metropolitan Boston, is it not?

A. Yes.

Q. And there are a lot of Atlantic service stations up there, aren't there, in that area?

A. One, two, three—

Q. I mean in the metropolitan Boston area?

A. Yes, quite a few.

Q. Isn't it a fact that the Atlantic service stations have the Goodyear window valance and Goodyear outdoor 3390 pole sign on them?

A. I have two.

Q. You have two?

A. Yes.

Q. And do you stock Goodyear tires?

A. No, I don't stock them, but I can get them any time I want them. They are very handy to me.

Q. It would be to your advantage to have the Firestone sign up there, wouldn't it?

A. Well, it doesn't make too much difference, if I can't sell a man a Firestone, I will sell him a Goodyear, or a Kelly-Springfield or a Fisk, anything he wants.

Q. But if a motorist were coming along, he wouldn't know you handle Firestone from your outdoor sign, would he?

A. No, from my window, you have to pass me before you can see it on the window.

Mr. Kelaher: I have no further questions.

Mr. Ballard: Thank you very much, Mr. McCarthy.

(Witness excused.)

3391 GEORGE ZARELLA was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give your name and address to the reporter, please.

The Witness: George Zarella, 7 Headland Way, Bedford, Massachusetts.

*Direct Examination by Mr. Gordon.*

Q. Mr. Zarella, Mr. Kelaher is counsel for the Federal Trade Commission, and he is sitting at this other table. Mr. Kolb is the Examiner in the case. And I will question you.

What is your home address?

A. 7 Headland Way, Bedford, Massachusetts.

Q. And the address of your station?

A. 206 Salem Street, Malden, Massachusetts.

Q. Malden is in Greater Boston, is it not?

A. Yes, it is considered the Greater Boston area.

Q. You lease an Atlantic station, do you not?

A. Yes, I do.

Q. How long have you leased one?

A. Thirteen years.

3392 Q. Since 1945?

A. Right.

Q. What is the term of your present lease?

A. The present term is a three-year lease.

Q. When did you get that?

A. Well, if I recall, it was probably say six or seven years ago. I was one of the first ones in Massachusetts to have this three-year lease.

Q. Would you tell me what kind of tires you now have in your station, what kind you stock in your station?

A. Well, I stock Pharris tires.

Q. Any other kind?

A. Well, I have some Goodrich tires.

Q. How long have you stocked Pharris tires?

A. I would say in the last two years.

3393 Q. Prior to that, what kind of tire did you have in your station?

A. Well, I had a consignment deal with a Pennsylvania tire company that I purchased through a local agency there. I think I purchased something like \$800 worth of tires from him at the time on a consignment deal.

Q. Did you carry Pennsylvania tires for any length of time?

A. I would say roughly two years.

Q. Have you carried batteries in your station?

A. Yes.

Q. What kind?

A. Right at the present time I am carrying Surrette batteries. I have had those the last eight or nine years.

Q. How long have you carried Surrette?

A. I would say roughly eight or nine years.

Q. What portion of your battery sales would you say are Surrette batteries?

A. I would say most of the sales are Surrette batteries.

Q. Where do you purchase your accessories?

A. Well, I have several local dealers in the area. I have two fellows that come in to the station, with one of these

trucks loaded with merchandise, and they come in, say, once a week, and I purchase from them.

Q. Do you know their names?

3394 A. Eastern Auto Parts in Malden, Colburn Auto Parts in Malden, Schrager Auto Parts in Malden, and Ross Motor Parts in Medford is also another one.

Q. Could you estimate for me about how much you bought from the Goodyear store in the last year or so?

A. According to the records I get from one of my dealers, I think it was roughly \$200 I purchased last year.

Q. During that same period—

A. (Interposing.) I mean I wouldn't want you to quote me, but I think that is what it was.

Q. During that same period, about how much TBA have you bought from all stores?

A. On a yearly basis?

Q. Yes.

A. I would say between four or five thousand dollars.

Q. Has this been your general TBA purchasing pattern for some time, what you have just described?

A. Yes, it has.

Q. Does it go back to practically when you began as an Atlantic dealer?

A. Yes.

Q. Do you display TBA?

A. Yes, I do.

Q. Do you display Surrette batteries?

A. I have a Surrette stand right in my office.

3395 Q. What kind of fanbelts do you carry?

A. Gates.

Q. Do you have a rack?

A. Yes, I have a rack with the Gates name on the rack.

Q. Do you ever place the TBA you carry on display in your window?

A. Yes, I do.

Q. The accessories you purchase, are they on display on the shelves in your station?

A. Yes, I have several shelves in my office.

Q. Are these visible to your Atlantic salesman?

A. Yes, they are.

Q. Is the TBA you carry visible to anyone?

A. It is.

Q. Do you sell TBA you carry on Atlantic credit cards?

A. Yes, I do, the purchase of tires and so forth, I put that on the Atlantic credit card.

Q. Have you ever been criticized for doing that?

A. No, not to my knowledge.

Q. Has anyone from Atlantic ever criticized you for carrying the TBA and selling the TBA you do?

A. Never.

Q. Has anyone from Atlantic ever told you to stop buying TBA that you have been buying?

A. Not to my knowledge.

3396 Q. Has anyone from Atlantic ever told you to remove that TBA from your station or hide it?

A. No.

Q. Who makes the decisions in your station as to what TBA you buy?

A. I do.

Q. Do you feel free to buy any TBA you want?

A. I do.

Q. Do you feel free to buy TBA from any source you want?

A. Yes.

Q. Have you ever been forced or pressured into buying Goodyear TBA?

A. No, never was.

Q. Now, Mr. Zarella, I would like to show you this letter marked Commission's Exhibit 150. It is a letter, dated March 1, 1951, on the stationery of Mr. Culley.

Would you examine that letter and tell me whether you have ever received it?

A. I think I do recall receiving a letter through the mail like this.

Q. Thank you.

Now, I show you this letter marked Commission's Exhibit 206. It is entitled "A Restatement of Atlantic's TBA Policy", again on Mr. Culley's stationery.

A. I do recall this, yes.

Q. Now, I show you this letter which is marked 3397 Commission's Exhibit 207. It is called "No Forcing", dated June 24, 1955.

A. Yes, I remember this distinctly.

Q. Do you know who the regional manager is in your particular region?

A. Gee, I don't recall who he is right now. There is a Mr. Wilson.

Q. Mr. Wilson?

A. Yes, I think that was he.

Q. Do you know a Mr. Jollie?

A. Yes.

Q. Did he send you that?

A. I think his signature was on the bottom of those letters, Mr. Jollie's.

Q. Mr. Zarella, your lease has been renewed many times, has it not?

A. Yes, it has been renewed.

Q. In connection with your lease renewals, has Atlantic ever discussed the brand of TBA you carry and sell in your station?

A. No.

Q. Are there many stations of other oil companies in your area that compete with your station?

A. Yes, several of them.

Q. Could you name a few of those?

A. Well, Socony, Gulf, Jenny, Omoco. I think 3398 Jenny is more of a local New England gas.

Q. Have you received offers from any other oil companies to take stations for them?

A. Yes.

Mr. Kelaher: Your Honor, I am going to object to this line of questioning.

Mr. Gordon: This is certainly admissible. We have followed this line of questioning many times before.

Mr. Kelaher: I have objected before, too. I can't see the relevancy of this type of testimony in this case at this time.

Mr. Gordon: I can give you many reasons for this if you are thinking of sustaining the objection.

line of questioning, your Honor, and I would like to do so,

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Gordon:

Q. You have received offers from—

A. (Interposing.) Yes, I received several offers from other stations, one very close by, the next corner to me. I was offered that station.

Q. Are qualified good dealers in demand?

A. Very much so.

3399 By Mr. Gordon:

Q. Do you have many personal credit customers?

A. My own personal, yes, I have several.

Q. Do you know Atlantic has a program by which it inspects its stations?

A. They do.

Q. Do they, shortly after those inspections, discuss the results with you?

A. Well, they have, for housekeeping, what they call a

mark they give you and usually after two or three weeks when the dealer salesman comes in, we usually ask him what the mark was we got for housekeeping and so forth, and drive-way inspection.

Q. They discuss it with you?

A. Yes, they do.

Q. Do they ever mention in connection with those discussions the brand of TBA you carry?

A. No.

3400 Mr. Gordon: I have no further questions.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Zarella, where is Malden, Massachusetts located in relation to Boston, Greater Boston?

A. Well, I would say—

Q. (Interposing.) How many miles?

A. I would say roughly between six and seven.

Q. You referred to a Goodyear service store, is that correct, in your testimony? Where is it located?

A. I think the nearest one to me, I think there is one in Lynne, that is the nearest one. Lynne, Massachusetts.

Q. How far away is Lynne from Malden?

A. I would say it is around five or six miles from Malden.

Q. There are no Goodyear supply points in Malden; is that right?

A. There is an independent Goodyear supplier in Malden and he operates the store himself.

Q. What is his name?

A. I think it is Kaufman.

Q. I take it he is not a designated supply point under the Atlantic set-up, is he?

A. Not that I know of. I think that Lynne is the nearest one.

Q. The nearest designated supply point?

3401 A. I think, to Malden, yes.

Q. Now, you have been an Atlantic lessee dealer since 1945?

A. That is right.

Q. Now, beginning in 1945, at that time did you make any purchases from Atlantic Refining Company, itself? Did you purchase Lee tires?

A. I was purchasing Lee tires from Atlantic at the time, but not too many. It was mostly—I would say some were Lees and mostly Firestones that I was purchasing from the Firestone dealer.

Q. Did you purchase Exide batteries from Atlantic?

A. I had some Exide, yes, and I also had the Surrette with Exide.

Q. Did you purchase Exide batteries from Atlantic?

A. Yes, I did.

Q. Where was the Atlantic warehouse?

A. I think at that time they were located in Cambridge, Massachusetts, or Brighton, I should say.

Q. Where?

A. I think it was Brighton. I am sorry, I take that back. That is Allston, Massachusetts.

Q. Is that in the Cambridge area, Allston?

A. Yes.

Q. That is way on the other end of Boston?

A. Right.

3402 Q. How many miles would you say that is from your place?

A. I would say probably 12 miles from my station.

Q. Now, at that time when you went into the station, was it a new station or did you replace another dealer?

A. When I went into the station, it was closed, it was closed during the war years. I was the first one—

Q. (Interposing.) You were the first one in it?

A. Yes, it was an old station and they fixed it up.

Q. At that time dealers were more difficult to find than they are today, is that true, in 1945?

A. If I recall, I think they were hard to find at the time.

Q. What?

A. I think the dealers were hard to find at that time, if I recall. A lot of them had defense jobs, and I, myself, was on a defense job, and I was doubting if I should leave it or not, and then I finally decided I had to go into the gas business.

Q. Now, at the time you opened your station, did you have a Lee sign outside the station, on the premises, or a Lee identification, window valance, in your station?

A. Gee, I don't recall. I know I bought Lee tires.

Q. You stocked Lee tires?

A. Yes.

Q. You don't recall whether you had a Lee or Exide sign in your station?

3403. A. I think I put a Lee up myself, one of those over hanging signs, or a decal.

Q. Are you talking about a window valance?

A. Yes, I did have one of those.

Q. Now, at the time Atlantic changed over to Goodyear, which was in or about March 1951, did you attend a dealer meeting in your area concerning the matter?

A. Well, I don't know. I have attended several dealers' meetings.

Q. Would it refresh your recollections to state that at that time Atlantic was holding dealer meetings, at which it announced the change-over to the Goodyear TBA line? Do you recall that at all?

A. I do recall it. I got a letter on that, that they were going to change over to Goodyear.

Q. That was the letter shown to you on direct examination?

A. Yes.

Q. At that time isn't it true there was a meeting of Atlantic dealers in your area?

A. Yes, they have had several meetings.

Q. I am talking about the 1951 period.

A. I don't recall. I think maybe I was. I don't remember that far back.

Q. Now, is Malden, Massachusetts—in what district of the New England region of Atlantic is Malden 3404 located? Is that in the Boston district?

A. It is what they call a suburb of Boston. I will put it that way. Like I live in the next town, which is Medford, and we call it a suburb of Boston, too. The counties may be different. Boston goes under Suffolk and we go under Middlesex County.

Q. I am referring to the Atlantic set-up. I understand from counsel that it is in the Boston district.

A. Yes.

Q. Now, at that time do you recall any meetings in or about March '51 or after the change-over to Atlantic?

A. I think I did recall after 1951 they had dealers' meetings. I attended several.

Q. Was Goodyear TBA discussed at that time?

A. Yes, they had Goodyear TBA at the meetings.

Q. Did they have a Goodyear representative at the meetings sometimes?

A. I think they did have a Goodyear representative.

Q. Now, getting back to the change-over to Goodyear TBA, was your station identification changed to Goodyear identification?

A. Yes.

Q. And isn't that true of all the Atlantic dealers in your area?

A. No.

3405 Q. Aren't the majority of them identified with Goodyear window valances and outdoor pole signs?

A. My own station has. I don't know about the others. I never noticed too much the other Atlantic stations. I know some that carry other different brands.

Q. I am talking about an outdoor pole sign. Isn't it true that every station in your area either has a Goodyear outdoor pole sign or has not an outdoor pole sign?

A. Some do and some don't.

Q. But the ones that do, it is a Goodyear sign?

A. Right.

3406 Q. And isn't that true of the Goodyear valance in the window, also?

A. I never noticed.

Q. Do you have a Goodyear sign?

A. Just the overhead pole sign. But the decal I took out.

Q. You are advertising Goodyear tires in your station and you testified you don't carry Goodyear tires?

A. That is right. For one reason, I don't sell them, because I think there I am in a price area and I have to compete with competition and that is one reason I can't sell Goodyear tires.

Q. If you don't sell them, why do you advertise them?

A. Well, I just have the sign there. Some people occasionally ask for a Goodyear tire and I pick one up.

Q. Isn't it a fact you have a sign there because Atlantic put it there?

A. Well, I have other signs besides Atlantic. I have also a Penn sign in the window.

Q. I am talking about the Goodyear outdoor pole sign.

A. That was put up there and don't mean nothing to me.

Q. It wasn't put up at your request, was it?

A. Not that I recall.

Q. You wouldn't request it if you weren't selling Goodyear, would you?

A. No, but the—

3407 Q. Just answer the questions.

When was that sign put up there?

A. Probably five or six years back.

Q. Right after Atlantic changed over to Goodyear TBA, wasn't it?

A. Right.

Q. And since that time you haven't stocked Goodyear tires?

A. No.

Q. Have you sold Goodyear tires on a fill-in basis since that time?

A. I sell Goodyear tires on request only.

Q. You don't like to sell Goodyear tires, do you?

A. No, I am not a Goodyear man, definitely not.

Q. Who manufactures Pharris tires, do you know?

A. Well, the reason why I carry those tires, they give you a road hazard guarantee, which Goodyear doesn't give and I think it means a lot to protect the customers I sell a tire to, if somebody goes up the street and has a blow-out and comes back and I make the adjustment myself. I am well satisfied with the tires I sell. Goodyear doesn't do that.

Q. And you get a better price on Pharris tires?

A. I certainly do. I get them on a consignment basis.

Q. It is to your advantage as an Atlantic dealer to handle Pharris tires, isn't it, to your financial advantage to handle them, instead of Goodyear tires; is that right?

3408 Q. A. Right.

Q. Now, getting down to batteries. You handle a Surette battery?

A. Yes.

Q. Is that a local battery?

A. That battery is made in Lynn, Massachusetts.

Q. That has consumer acceptance in your area, a local type?

A. It is a local outfit battery, that is right.

Q. Do you purchase any Goodyear batteries?

A. No. I have bought some, but I never had any luck with them.

Q. You don't like Goodyear batteries, either?

A. No, I sent two back for adjustment and I never got my credit on them yet.

3409 By Mr. Kelaher:

Q. Have you had any conversation with your Atlantic salesman concerning your purchases of Goodyear TBA, your lack of purchases, I mean?

A. They have approached me on it, that they were going to sell Goodyear products, that Goodyear was taking over their products, if that is what you mean.

Q. I am talking about this year, or last year, or the previous year. Have you ever had any conversations with your Atlantic salesman, concerning your lack of purchases of Goodyear TBA?

A. They did mention to me why I didn't buy Goodyear products and I told them I didn't care too much for them.

Q. And you said you learned, through your Atlantic dealer, that you purchased approximately \$200 worth of Goodyear TBA, last year, is that right?

A. I think through my salesman, if I recall, I don't know whether it was last year or the year before, I mentioned to him, I think it was \$200 or \$250 worth of tires I bought.

Q. Did he have a record of that? You mentioned on your direct examination, he had a record.

A. I could get a record of that. I think my sales supervisor can give me a record on that, from Atlantic.

Q. They keep a record of your purchases of Goodyear TBA?

A. I think they do.

Mr. Kelaher: No further questions.

3410 . . . *\*Redirect Examination by Mr. Gordon.*

Q. Mr. Zarella, at the time of the change-over in 1951, to the Goodyear program, when Atlantic started to promote the sale of Goodyear TBA, did Atlantic make it clear to you that the purchase of TBA by you from Goodyear was voluntary?

A. They did.

Q. Isn't it true also that your Pharris salesman knows how much Pharris tires you buy from him?

A. Yes.

*Recross Examination by Mr. Kelaher.*

Q. Isn't it also true that your Atlantic salesman doesn't know how much tires you buy from Pharris?

A. He sees them when he comes in the station, he knows I sell them.

Q. I am talking about the dollar value, unless you tell him. Under your new lease, you pay a percentage to Atlantic on your gross sales.

A. I think they have a setup like that.

Q. Do you itemize it by brands?

A. No.

Q. So your Atlantic salesman does not know what your volume of purchases of Pharris tires or any other non-Goodyear TBA product is, does he?

3411 A. That is right.

Q. But he does know what your purchases of Goodyear TBA are?

A. I believe he does.

Q. Your answer is yes to that last one?

A. Yes.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: Thank you.

(Witness excused.)

Mr. Ballard: Could we have a brief recess, sir?

Hearing Examiner Kolb: All right.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

EDWARD L. SNOW, was called as a witness on behalf of the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Edward L. Snow, home address: No. 8, Moreland Street, Worcester.

*Direct Examination by Mr. Ballard.*

Q. What is the address of your Atlantic station?

3412 A. 1119 Pleasant Street, Worcester.

Q. How long have you been at that station?

A. Well, close to 20 years.

Q. You lease that station from Atlantic?

A. Yes, sir.

Q. What is the term of your present lease?

A. I can't get you.

Q. How long a term is your present lease, sir?

A. Three years.

Q. Do you carry any stock of tires in your station, sir?

A. No, sir.

Mr. Kelaher: No tires?

The Witness: No.

By Mr. Ballard:

Q. How about batteries?

A. Delco batteries.

Q. How long have you been carrying Delco batteries?

A. Oh, six or seven years.

Q. Do you have a Delco sign on your station?

A. Yes, sir, on the fence.

Q. Do you do any promotional activity to promote sales of your station?

A. Well, I used to but I don't now, because I am pretty well established.

Q. What kind of things did you used to do?

3413 A. Well, like lubrications and oil and stuff like that.

Q. Do you ever give calendars or Christmas cards or things?

A. Calendars.

Q. Do you still do that?

A. Nope, I switched to pencils.

Q. You give pencils now?

A. Yes.

Q. Did the Atlantic Refining Company publish an article about your station in their dealer news?

A. Yes, sir.

Q. They showed a picture of you in that article?

A. What?

Q. Did they show a picture of you in that article?

A. Yes, sir.

Q. Was that picture taken in your station?

A. Yes, sir.

Q. Did it show the Delco sign on your fence?

A. I think it did.

Q. Has any other oil company ever asked you to be a lessee for it?

A. Oh, yes, half a dozen of them.

Mr. Ballard: Cross-examination, Mr. Kelaher.

*Cross-Examination by Mr. Kelaher.*

Q. How long did I understand you to say you had 3414 been an Atlantic dealer, Mr. Snow?

A. About 20 years.

Q. Have you been at the same location for those 20 years?

A. Yes, sir.

Q. And that is in Worcester, Massachusetts, which is about—

A. Worcester, Massachusetts.

Q. How many miles west of Boston is that?

A. Forty-four.

Q. What is the population of Worcester?

A. I don't know, there are so many of them moving out now with high taxes; I don't know.

Q. It is a relatively small town, isn't it?

A. I think it is about 180,000, something like that.

Hearing Examiner Kolb: Did you say 180,000 or 200,000?

The Witness: About 180,000.

By Mr. Kelaher:

Q. Are there many other Atlantic stations in that area?

A. Not for a mile and a half.

Q. Which one of Atlantic's districts is Worcester located in, do you know?

A. Which what?

Mr. Kelaher: Off the record!

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3415 Hearing Examiner Kolb: On the record.

Mr. Kelaher: Your Honor, it is stipulated between counsel that Worcester, Massachusetts is in the Boston district of Atlantic's New England region.

By Mr. Kelaher:

Q. Is it your testimony that you carry no tires in stock today?

A. No.

Hearing Examiner Kolb: That is very confusing on the record. Does that mean you do carry or don't?

The Witness: I don't carry them; all on orders.

By Mr. Kelaher:

Q. You don't carry a stock of tires?

A. No, sir.

Q. Do you remember when Atlantic was selling Lee tires and Exide batteries and Thermoid fanbelts and Fram oil filters?

A. Yes, I do.

Q. Did Atlantic have a supply point up in your area, where you could buy them from?

A. Yes.

Q. Did you buy them?

A. No, sir.

Q. Where was there a supply point located, in Worcester?

A. No, a truck came by, out of Providence.

3416 Q. Providence, Rhode Island?

A. Yes.

Q. That is a long distance away, isn't it?

A. Yes.

Q. So you would have a delivery problem there, wouldn't you, a service problem?

A. Yes.

Q. Is that the reason—

A. Yes, I do, I never bought any, the only thing I ever bought off Atlantic is Lee tires.

Q. You did buy Lee tires at one time?

A. Yes, I bought them, because I liked the tires.

Q. Did you stock the tires?

A. No.

Q. But you did buy the Lee tires?

A. Yes.

Q. Did you like the road hazard guarantee with them?

A. They were all right, yes.

Q. Was the price good?

A. It was all right.

Q. Was the price lower on those than on Goodyear tires?

A. Well, today, there are so many cut-throats on tires, you can't figure that. That was 10 or 12 years ago.

Q. I mean your purchase price.

A. Well, the purchase price today is a little bit 3417 higher than it was then.

Q. Now you stated that you have been in the same station through these years. Did you ever have a Lee sign up on your station, a Lee window valance?

A. Yes.

Q. Did you have a Lee or Exide sign outside on your premises?

A. Yes, but I wasn't buying Exide batteries from Atlantic.

Q. But you had Lee and Exide signs up?

A. Yes.

Q. Why did you have them up? Was that because Atlantic put them there?

A. No, I put them there.

Q. But you weren't selling Lee tires?

A. No, after I got the Lee tire sign, I just had it in the window, it wasn't plastered to the window, it was off.

Q. You just had the Lee sign in the window?

A. That is all.

Q. You never had the outdoor pole sign in your station?

A. No.

Q. Does your station have a large frontage to it?

A. Mine!

Q. Yes.

A. I think I have the smallest frontage of any station Atlantic owns.

Q. So you don't have room for outdoor signs?

3418 A. It was built when they had model T cars.

Q. So you don't have room. Do you have an outdoor sign there now?

A. No, sir.

Q. There is no room for one, is there?

A. No, I used to have a sidewalk sign and I had to take it off, because we backed into it and either scratched the side of the car or busted the sign, so I had them take it out.

Q. You had who take it out?

A. Atlantic.

Q. Was that a Goodyear outdoor sign?

A. No, not a Goodyear. It was just a lubrication and stuff like that.

Q. Now, do you have any window valance—do you know what that is, a window decal?

A. Yes.

Q. Do you have the Goodyear one up there, I guess; don't you?

A. Yes.

Q. Was that put up after Atlantic changed over to the Goodyear TBA program?

A. I have forgot now whether it was or not.

Q. And all of the Atlantic stations that you know of around there have that Goodyear decal up, don't they?

3419 A. I couldn't tell you that, either.

Q. Do some of them have it up?

A. Some of them do and some don't.

Q. They either have that up or have nothing up?

A. That is it.

Q. And the same goes for the Goodyear pole outside, they either have a Goodyear sign up or nothing up?

A. They haven't got a Goodyear pole.

Q. I mean in the other stations?

A. I never saw a Goodyear pole.

Q. Around that area?

A. No.

Q. You don't do a very big business in TBA, do you?

A. No, I don't, because if I want anything, I have got a lot of stock, but I haven't got no stock just like Gates fanbelts, I have got them, but I buy them from Worcester Wheel and Rim, or City Auto Parts.

Q. But you don't carry—you carry no stock of tires, right?

A. No, no stock of tires at all.

Q. You carry very few batteries?

A. Delco batteries, and that is all.

Q. Very few?

A. Four or five.

Q. And do you purchase Goodyear batteries when 3420 a customer asks for Goodyear?

A. No.

Q. You don't like Goodyear?

A. Huh!

Q. Do you like Goodyear batteries?

A. I didn't say I didn't like them, I have nothing against them, but I sell Delco. I get a better deal on Delco than I can on them.

Q. It is to your advantage to handle Delco batteries in preference to Goodyear batteries, isn't it?

A. Delco is the best to me.

Q. From a financial standpoint?

A. Yes.

Q. Now you say you carry no stock of accessories. Do you carry DuPont polishes, for example, or Johnston's?

A. I carry a few DuPonts. I get that from City Auto Parts.

Q. Do you carry some Johnson—you carry very little stock of accessories, is that correct?

A. Yes. I get that either from Worcester Whell (and Rim or City Auto Parts, or Christian Thompson.)

Mr. Kelaher: No further questions.

Mr. Ballard: No further questions, your Honor.

Hearing Examiner Kolb: That is all. Thank you very much.

3421 (Witness excused.)

DOMINIC MOLINARO, JR. was called as a witness for The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

*Direct Examination.*

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Dominic Molinaro, Jr., Crowley Street, Burlington, Massachusetts.

By Mr. Gordon:

Q. The address you just gave, Mr. Molinaro, was that the address of your home or your station?

A. My home.

Q. What is the address of your station?

A. Cambridge Road, Burlington, Massachusetts.

Q. You lease an Atlantic station, do you not, Mr. Molinaro?

A. I do.

Q. When did you begin to lease it?

A. 1949.

Q. Have you been in that same station up at the present time?

A. Yes.

Q. What is the term of your present lease?

A. Three years.

3422 Q. What kind of tires are you now purchasing and stocking?

A. Goodyear.

Q. Where do you purchase those tires?

A. The Goodyear store, in Lowell, Massachusetts.

Q. What kind of batteries do you stock?

A. Bowers.

Q. Entirely?

A. Yes.

Q. How long have you been purchasing Bowers?

A. Six or seven years, around that.

Q. What kind of accessories—do you purchase your accessories from Goodyear?

A. No, very, very little.

Q. Where do you purchase your accessories?

A. You want the names in—

Q. (Interposing.) Your main suppliers.

A. Well, we have Suppliers Automotive Company, that is in Woburn; and, Cataldo Auto Parts, and they are in Medford.

Q. What portion of your accessories do you buy from Goodyear, would you say?

A. I would say less than ten percent.

Q. Now, before 1951, Atlantic was selling Lee and Exide, you note that?

A. Yes.

Q. What kind of tires did you stock then?

3423 A. I think I was stocking Lee and Goodrich.

Q. About what portion of each?

A. About 50/50.

Q. Where did you get your accessories?

A. I think I was still getting them from the peddlers and parts companies at that time, peddlers and the same companies I mentioned before.

Q. What kind of batteries did you then buy?

A. I think I had Exide, and Goodyear for a short time, at that time.

Q. Why do you buy Goodyear tires?

A. Well, I am the only Goodyear dealer in Burlington. Goodyear is not represented in any other store, and well, they are a good tire, and I get a good price on them.

Q. Does your Atlantic salesman sell Goodyear tires to you?

A. Yes, I guess so, indirectly.

Q. Does he help you in purchasing Goodyear tires?

A. He does.

Q. How does he do that?

A. Well, whenever I run into a price situation, I always contact him, and usually he does a little better.

Q. He gets a better price for you?

A. Yes.

Q. Now, do you openly display Bowers batteries?

A. Oh, yes.

3424 Q. How do you do that?

A. Well, I have a rack in my office.

Q. Is the name "Bowers" visible?

A. Oh, yes, the name is on the rack and on each battery.

Q. What kind of battery cables do you sell?

A. Bowes.

Q. How do you display those?

A. In a rack.

- Q. The name of the company is visible on that rack?
- A. Yes.
- Q. What kind of fanbelts do you carry?
- A. Dayton.
- Q. Are they displayed?
- A. Yes.
- Q. How?
- A. On a rack right on the side of the ~~bay~~.
- Q. Are the accessories that you purchase openly displayed in your station?
- A. Yes.
- Q. Are they on the shelves?
- A. Yes.
- Q. Are they visible to your Atlantic salesman?
- A. Anyone else—who are you going to sell them?
- Q. Do you sell these accessories and Bowers batteries on Atlantic credit cards?

3425 A. Yes.

- Q. Did Atlantic ever criticize you for doing that?
- A. No.
- Q. Had Atlantic ever criticized you for carrying the batteries and accessories you do?
- A. No.
- Q. Did they ever tell you to stop buying those batteries and accessories?
- A. Never, they had better ~~not~~.
- Q. Did they ever tell you to remove them from your station or hide them?
- A. Never.
- Q. Who makes the decisions in your station as to what to buy?
- A. I think I do.
- Q. You feel free to buy whatever TBA you want?
- A. I certainly do.

Q. Have you ever been forced or pressured into buying Goodyear TBA?

A. Never.

Q. I show you now, Mr. Molinaro, Commission's Exhibit 150, which is a letter, dated March 1, 1951, on Mr. Colley's letterhead, and ask you to examine that letter, and tell me whether you recall receiving such a letter.

A. Yes, I think I did. Yes, I did.

Q. Now, I show you Commission's Exhibit 206, 3426 which is entitled "A Restatement of Atlantic's TBA Policy", a letter dated August 28, 1952, also on Mr. Colley's letterhead, and ask you to examine that and tell me whether you remember receiving it?

A. Yes.

Q. Now, I show you Commission's Exhibit 207, which is a letter entitled "No Forcing", and it is dated June 1955. That is on a regional manager's letterhead. Could you tell me whether you recall receiving that letter?

A. Yes, I think I recall this one, too. Yes.

Q. Has your lease been renewed many times, Mr. Molinaro?

A. Oh, yes, nine years.

Q. Tell me, in connection with the renewal of your lease, has Atlantic ever discussed your brand, the brand of TBA, that you carry?

A. Never.

Q. Are there many oil companies active in your area?

A. Oh, yes.

Q. Stations that compete with you?

A. Very much, for the size of the town, very many.

Q. Have you received offers from other companies to take stations?

A. Yes.

Q. How many companies?

A. Well, three or four of them.

3427 Q. Are good dealers in demand?

A. I think so.

Q. Do you feel that you could, if you wanted to, get a station for another company?

A. I know I could.

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

By Mr. Gordon:

Q. If you took one of these stations, do you feel you could take a substantial portion of your business with you?

Mr. Kelaher: Objection, speculative.

Mr. Gordon: That goes to the state of mind of the dealer and I believe is perfectly admissible.

Hearing Examiner Kolb: I don't know that state of mind has anything to do with taking the customers with him.

Mr. Gordon: If he feels he can, he certainly has a freer state of mind than if he felt he couldn't.

Mr. Kelaher: That sounds very ingenious, but state of mind testimony isn't what you are getting out of this particular witness.

Mr. Gordon: It certainly is.

Mr. Kelaher: It isn't proper state of mind testimony.

Hearing Examiner Kolb: Well, let the witness answer.

The objection will be overruled.

3428 Hearing Examiner Kolb: Read the question.

(The reporter read the question as follows: "If you took one of these stations, do you feel you could take a substantial portion of your business with you?")

The Witness: Yes, I believe I could.

By Mr. Gordon:

Q. Are you familiar with the fact Atlantic has a station inspection program?

A. Yes.

Q. Do they discuss the results of those inspections with you after they have the inspection? Does the salesman talk to you about it?

A. Sometimes, yes, most of the times.

Q. Did they ever mention the brand of TBA you are carrying in connection with those discussions?

A. No, never.

Mr. Gordon: I have no further questions.

*Cross-Examination by Mr. Kelaher.*

Q. Would you tell us where Burlington, Massachusetts is located?

A. Between Lowell and Boston, about the midway point, 12 miles from each city.

Q. Is that part of the Greater Boston area?

A. Yes, just on the outskirts.

3429 Q. Is that north of Boston?

A. Yes.

Q. You began station operations in 1949?

A. That is right.

Q. And at that time Atlantic was selling Lee tires, Exide batteries, Thermoid fanbelts, Fram filters, and other accessories; is that right?

A. If you say so, yes. I think so.

Q. I am asking you is that right.

A. I think so.

Q. Well, you purchased Lee tires from Atlantic, right?

A. I did.

Q. And you purchased Exide batteries from Atlantic?

A. I did.

Q. Did you purchase any accessories from Atlantic?

A. I don't recall, really.

Q. Now, at that time were there other service stations in your area also selling Lee tires?

A. No.

Q. There were no other Lee tire distributors in your area?

A. No.

Q. Were you satisfied with Lee tires?

A. Yes, and no. They were a good tire, but they weren't a name tire.

Q. Why did you handle them if you weren't entirely satisfied with them?

A. Well, I was buying Lee at a better price than Goodrich.

Q. You were buying Lee at a better price than you could have purchased Goodyear?

A. That is right.

Q. Weren't you handling Lee tires because Atlantic was selling them?

A. Well, sure, but still, if Atlantic didn't give me the price, I wouldn't have handled them. I am a price man, if you know me.

Q. I don't know, but I am glad to hear it.

Now, you gave us, you stated that after the change-over to Goodyear in 1951, you changed to Goodyear, because you were, one reason was price and you were the only Goodyear distributor in the area. Was that your reason?

A. That is right, and it was a big name.

Q. Why didn't you change over before that?

A. Because I had Goodrich.

Q. You had Lee, didn't you?

A. I had Lee and Goodrich. I had Goodrich for the big name and then Atlantic went along with Goodyear and I was buying Goodyear cheaper than I was buying Goodrich; so, I switched the major brand to Goodyear.

Q. Isn't it a fact that you could have continued purchasing Lee at a lower price than you began to purchase Goodyear?

3431 A. I was paying the same price for both Lee and Goodyear.

Q. Beg your pardon?

A. I was paying the same price for Lee and Goodyear, if I remember correctly.

Q. And if you remember correctly, you could have purchased Goodyear then, prior to 1951, at the same price you bought Lee; is that right? Is that what you are saying?

A. Well, no, before Atlantic went into Goodyear, I couldn't buy Goodyear as cheap as I could Lee. That is one of the reasons why I didn't handle it.

Q. Are you stating that you got a lower price because you were an Atlantic dealer, after the Atlantic sponsorship of Goodyear?

A. That is right.

Q. Now, isn't it also true that Lee had good consumer acceptance in your area?

A. No, not too good.

Q. It had the road hazard guarantee, did it not?

A. Yes, it did.

Q. Was that a guarantee that was, had consumer acceptance in preference to workmanship and defect guarantees of Goodyear and other tires?

A. How am I supposed to answer that one? Yes, that road hazard guarantee was a selling point. But still, I think that the average consumer that wants to buy 3432 a good product, he is going to pay just a little more and give a little bit up, to get that good product, name product, I should say.

Q. Isn't it a fact you were selling Lee because Atlantic was selling Lee?

A. Yes.

Q. The answer is Yes?

A. Yes.

Q. And now—

A. (Interposing.) Price-wise.

Q. Beg your pardon?

A. Price-wise.

Q. I would like to have you direct your attention to the change-over by Atlantic to Goodyear TBA. Do you recall attending a dealer meeting in 1951 concerning the change-over?

A. I don't remember if I did or not.

Q. Do you remember having a call made to your station by an Atlantic representative or by a Goodyear representative concerning the new program?

A. Yes.

Q. And at that time were you told where the designated supply point would be for Goodyear.

A. Yes, I believe so.

Q. You have testified that your Goodyear supply point is the Goodyear store in Lowell, Massachusetts.

A. That is right.

3433 Q. Now, was that when you began to purchase Goodyear tires?

A. I think close to that time. Shortly afterwards, put it that way.

Q. And since that time you have stocked Goodyear tires only?

A. A hundred percent.

By Mr. Kelaher:

Q. There are other Atlantic stations in your area, are there not?

A. Not in Burlington.

Q. In the Greater Boston area?

A. Oh, yes.

Q. You have lived in that area for some years apparently?

A. Yes.

Q. And in your travels in and about the area, you  
3434 have noticed other Atlantic stations, I presume?

A. That is right.

Q. And isn't it a fact that after Atlantic changed to  
Goodyear TBA line in 1951, you noticed Goodyear window  
valances and Goodyear outdoor pole signs appearing in  
that area?

A. Well, I imagine so, I mean I never really look  
that closely.

Q. The answer is Yes?

A. Well, I honestly can't say. Honestly, I can't say.  
I don't look at other people's stations as close as I watch  
my own.

Q. Aren't there any other Atlantic stations in your  
town?

A. No.

Q. No others in your town?

A. No.

Q. Do you ever go into Boston?

A. Yes.

Q. And you mean to tell me you never noticed what  
identification appears in Atlantic stations?

A. Well, I don't look in the window and see if they  
have a valance or not.

Q. Do you ever look at the outside and see whether  
there is a pole up with a Goodyear sign on it?

A. Usually they have one on there, some of them.

Q. The answer is Yes, then?

3435 A. Oh, yes.

Q. You stated you purchased some accessories  
from Automotive Parts. Are you including in that acces-  
sories category so-called hard parts?

A. I don't—

Q. (Interposing.) Hard parts as distinguished from

chemicals and waxes, ignition parts, and things of that type?

A: Oh, yes.

Q. Do you do repair work at your station?

Mr. Gordon: I am not quite sure Mr. Kelaher defined it as we have all along in this case. Accessories include hard parts. I think accessories are distinguished from repair parts.

Hearing Examiner Kolb: Hard parts usually refers to repair parts, particularly fenders and things of that sort, in addition to parts of the motor.

Mr. Kelaher: I think that is pretty well established in this record.

Mr. Gordon: Spark plugs, for example, are definitely accessories.

Hearing Examiner Kolb: Yes.

By Mr. Kelaher:

Q. Well, let me—I am trying to find out what he buys anyway from these people. What do you buy from Automotive Parts?

3436 A. What?

Q. Did you say you bought from a company named Automotive Parts? I may have the name incorrectly. Located in Woburn?

A. Oh, yes, Suppliers Automotive.

Q. I beg your pardon?

A. Suppliers Automotive. Suppliers Automotive Parts Company.

Q. Do you buy so-called hard parts from that supplier?

A. I still don't get that hard parts.

Q. Do you do repair work in your station?

A. Yes.

Q. And you have to buy the parts with which you repair automobiles from somebody?

A. Yes, from him, yes.

Q. I am referring to that type of product.

A. You mean like clutches and stuff like that?

Q. That is right.

A. Yes, definitely.

Q. Do you buy those from Suppliers Automotive Parts?

A. That is right.

Q. And you mentioned several other suppliers. Do you also buy hard parts from those other suppliers?

A. Sometimes.

Q. When you purchase from the Goodyear service store in Lowell, Massachusetts, what do you purchase?

3437 A. Goodyear tires.

Q. And you stated you purchased some accessories from them?

A. Very, very little.

Q. What do you buy when you purchase?

A. Well, I have bought some sealed beams from them at one time and another, a few things when I am stuck short. Very little.

Q. What is the gallonage of your station per month?

A. Oh, I think we average about 28,000 to 30,000.

3438 Q. Would you say you were a medium-sized station—are you a fairly large station?

A. I am a big station.

Q. At least you are the biggest Atlantic station in that area, aren't you?

A. The biggest.

Q. You are the only one?

A. The only one.

Q. You stated you handled Exide batteries, prior to Atlantic's changeover to Goodyear TBA?

A. Right.

Q. Were the Exide batteries purchased from Atlantic?

A. Yes.

Q. And were you satisfied with the Exide batteries at the time?

A. I think I was, at the time, yes.

Q. Didn't you purchase Exide batteries because Atlantic was selling Exide batteries?

A. Price.

Q. Answer Yes or No, then expand, if you want to.

A. Well, Yes, because I got a good price on them.

Q. Is that true, was that the reason you were buying Goodyear batteries?

A. That is right.

Q. And you now, you stated, you haven't bought 3439 Goodyear batteries since the changeover to Goodyear TBA?

A. That is right.

Q. Do I understand you to mean you could get a better price from local suppliers, prior to the changeover than you can get, or could get from Goodyear after the changeover?

A. No, right now I am paying more for a battery than I would if I had been buying Goodyear, believe that or not.

Q. I don't know whether you answered my question. You stated that you were a price man, that seems to be your main theme?

A. That is right.

Q. Who were you buying the Goodyear batteries from, before 1951?

A. Oh, I don't know. I think it was Roy Johnson's, in Waltham.

Q. Roy Johnson, from where?

A. Waltham.

Q. And what was the reason you were buying Goodyear batteries at that time?

A. I don't know, just the salesman talked me into it, I guess.

Q. It wasn't because of price?

A. Well, the price was there, yes.

Q. Since the Atlantic began to sponsor Goodyear TBA, you stopped buying Goodyear batteries?

3440 A. That is right.

Q. You never bought a Goodyear battery since Atlantic began to sponsor Goodyear TBA?

A. That is right, five, six, seven years, whatever it is.

Q. Now is that because of price?

A. No.

Q. And now you are buying Bowers and paying a higher price for Bowers batteries than you would for Goodyear?

A. That is right, my loyalty got the best of me just once.

Q. You mean the loyalty to Goodyear?

A. No, to Bowers, this fellow that sells Bowers batteries is a very good friend of mine and that is why I buy Bowers batteries.

Q. You have testified that you were a price man. Now it develops that is not entirely true with all your TBA, is it?

A. With a few exceptions, of course. You can't be price all the way through. On the Bowers battery, a very good friend of mine, I have been buying from him six or seven years and I will continue to do so.

Q. You like the Bowers battery?

A. I like it very much.

Q. It is a good battery?

A. Yes, and good service with them.

Mr. Kelaher: No further questions.

3441 Mr. Gordon: No further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

Mr. Gordon: Can we recess for lunch at this time?

Hearing Examiner Kolb: All right. We will recess until 2:00 o'clock.

(Thereupon, at 12:32 o'clock p. m., the hearing was recessed, to reconvene at 2:00 o'clock p. m., this same date.)

3442

Afternoon Session.

(2:00 P. M.)

Hearing Examiner Kolb: The hearing will be in order.

CHARLES K. DETWILER was called as a witness on behalf of the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address!

The Witness: Charles K. Detwiler, 225 Dogwood Lane, Berwyn, Pennsylvania.

By Mr. Ballard:

Q. Are you presently an employee of Atlantic Refining Company?

A. Yes, sir.

Q. When did you join the employment of that company?

A. In July 1939.

Q. And what was your capacity at that time?

A. I was a service station attendant in a company-operated station in Philadelphia.

Q. Did you thereafter go to the Binghamton district, in New York?

A. That is correct, sir. I went up there in the 3443 spring of 1940.

Q. In what capacity was that?

A. As a service salesman.

Q. Did you later become a general salesman there?

A. No, sir, about a year later I was transferred to Hamburg, which is in the Buffalo district, as a general salesman.

Q. And you were I believe a lieutenant senior grade in the Navy during the war?

A. That is correct. I went into the Navy in 1942, December, and came out three years later as Lieutenant, Senior Grade.

Q. When you came out of the Navy, did you resume your service with Atlantic?

A. Yes, in the Rochester district. That would be December 1945.

Q. What was your next assignment with Atlantic?

A. At that time, I was a general salesman in the Batavia district, the Batavia area, which was the Rochester district.

Q. What was your next assignment after that?

A. In 1949 I went on a special assignment in the City of Rochester, which consisted of a study or survey of competitive stations. I also attempted to acquire competitive stations for Atlantic during that one-year assignment.

Q. Were those contract dealers or lessee dealers?

A. Contract, sir.

3444 Q. Do I understand that you were trying to get them to switch to the Atlantic brand of gasoline?

A. That is correct.

Q. How long did that assignment last?

A. That was approximately a year. Then in 1950 I went on an assignment in real estate, to acquire sites for service station construction.

Q. What area was that?

A. Both Rochester and Buffalo districts.

Q. Do I understand that you were looking at potential sites for service stations?

A. That is correct.

Q. In that work, what were the factors you kept in mind?

A. Development in an area, both residential and commercial, highway changes, traffic potential.

Q. Would those sites have been for lessee operation?

A. That is right, they were undeveloped sites, Mr. Ballard.

Q. Now then, how long were you a site representative?

A. Two years.

Q. That would bring you to 1952?

A. In March, 1952 I was assigned to the Binghamton district, as a sales supervisor.

Q. Is that sometimes also called the Southeastern District?

A. That is correct.

Q. Which is the correct name?

3445 A. Southeastern Tier.

Q. Speaking generally, what is the area covered by the Southeastern Tier District?

A. If you can picture a half moon, with a diameter on the New York Pennsylvania state line, approximately in the center of the state, with Binghamton as the center and your radius being about a hundred miles, you have got that picture.

Q. Does it include Binghamton?

A. That is right.

Q. Does it include other metropolitan centers?

A. Yes, it goes over to Cooperstown, on the east, which is approximately a hundred miles east of Binghamton, and to Corning and Bath on the west, which is an equivalent distance to the west and then this arc, as I described it, would touch the Finger Lakes, including places like Penn Yan, Ithica, which are north of Binghamton.

Q. Does it include Johnson City and Endicott?

A. Yes, sir.

Q. The headquarters for the district is Binghamton, I believe?

A. That is right.

Q. Atlantic, of course, encounters competition with other oil companies there?

A. Very much so.

3446 Q. Would you name a few of them for us?

A. There are approximately 12 major suppliers, Amoco, Esso, Socony, Sun, Tidal, Richfield.

Q. Does Gulf market there?

A. Yes, sir; Gulf is there.

Q. Texas?

A. Texas.

Q. Shell?

A. Shell to a very limited degree, only in the eastern part of the southeastern tier district.

Q. Sinclair?

A. Yes, sir.

Q. Cities Service?

A. Yes.

Q. Mobil?

A. Mobil, that is correct.

Q. And Calso?

A. Yes.

Q. Are these companies and Atlantic building new stations all the time?

A. That is correct.

Q. About how many Atlantic lessee stations are there in the Southeastern Tier district?

A. Approximately 65 in the Southeastern Tier District.

Q. How many contract stations, about?

3447 A. Approximately 35.

Q. I think you have been in these hearings and know what we mean by a service station, basically one with full service station facilities. How many of these contract stations would you say were service stations?

A. Only about 12.

Q. Now starting with the year 1956, I believe that is the first year you were a sales supervisor in the Southeastern Tier District, is that correct?

A. No, I was a sales supervisor in March of 1952.

Q. At that time were you the only sales supervisor?

A. That is correct. In 1956 there was another sales supervisor assignment set up in the Southeastern Tier District, and as of that time I supervised strictly lessee dealer operations.

Q. Previous to that you had supervised lessee and contract operations both?

A. That is right.

Q. How many salesmen did you have reporting to you when you were the only sales supervisor?

A. I had three dealer/salesmen, two general salesmen, and anywhere from two to five service salesmen, that figure varied through that span of years.

Q. I take it when another supervisor was added that the general salesmen were no longer under your 3448 charge, is that correct?

A. That is correct.

Q. But I assume some of the service salesmen were moved to the other man's charge?

A. No, the service salesmen were still my responsibility.

Q. Briefly, what is the responsibility of the sale supervisor, at the time you were one?

A. To supervise the performance and activity of the dealer/salesmen, and the service salesmen, so that our stations can develop and increase their sales of petroleum products.

Q. Incidentally, I don't know whether I asked this question or not: You are no longer a sales supervisor with the Southeastern Tier District, is that right?

A. That is right. Approximately a year ago, October of 1957, I was assigned to headquarters office here in Philadelphia, as dealer training coordinator.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.  
(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Was it the responsibility, primary responsibility of the salesmen in your district, to keep their stations manned with qualified dealers?

3449 A. That is right.

Q. Were dealer candidates scarce in your district?

A. They certainly were.

Q. Could you give us briefly the methods employed in locating potential dealers?

A. We would run newspaper ads, we would check our own dealers and competitive dealers, we would check among our own employees, we would also contact business men, preachers, priests, business organizations; in fact, door to door solicitation.

Q. Did you on occasion attract competitive dealers?

A. Yes.

Q. Did they on occasion attract some of your dealers?

A. That is right.

Q. Now when a salesman brought a dealer candidate to you, did you discuss with that dealer candidate the advantages and disadvantages of a dealers' business?

A. We did, we tried to spell out both advantages and disadvantages, so that he would have as complete an understanding as possible of the service station business.

Q. Was the book entitled "What a service station can mean to you" used in your district?

A. Yes, sir; it was.

Q. I show you a copy of Atlantic's Exhibit A-18, which is the booklet that was used in the Newark district, 3450 and allowing for changes in some of these letters between Newark and Binghamton, is this booklet the same as the booklet that was used in your district?

A. Yes, sir; it is the same.

Q. When you were talking to the dealer candidate, what disadvantages, if any, of a lessee service station business, would you mention to him?

A. Well, we pointed out to him that contrary to what he might have been used to, if he was working for industry, he, in the service station business, would have to work long hours. It would be hard work, it would involve working outside. He would also find out he would have to condition himself to minimum income, during the first year or first several years, depending on the situation.

Q. Would you also mention advantages of the business?

A. Absolutely.

Q. What advantages would you mention?

A. Briefly we discussed the fact that this would give him a chance to be independent, to make his own decisions, be his own boss. We would point out there was a good living to be made in the service station business if he applied himself and had the basic qualifications. We also pointed out there was job security in this particular work.

Q. By good living, what do you consider that a successful dealer, in your district, could make in a year?

3451 Q. A. We have several dealers who are in the \$12,000 to \$15,000 category.

Q. Did you ever suggest that a dealer candidate visit Atlantic dealers in the area?

A. Yes, sir, that was part of my routine in my inter-

view with the dealer prospect. I felt that the prospect would feel free to talk to one of our dealers, and ask him questions as well as make observations.

Q. Did you give him a list of the dealers in the area, or let him pick his own?

A. I usually suggested certain stations specifically because they were somewhat near each other. For example, Bouongirne-Gay.

Q. Was the name of that station Bonongirne or was it Bouongirne-Gay?

A. And Gay, G-a-y, yes.

Q. Did you ever suggest Cooley's station?

A. Another one was Cooley's, because that was on the same street. Another was George Mascayko. The reason for that, if I may mention it, Mascayko was a dealer who had been with us, I guess at that time, 19 or 20 years. Bouongirne-Gay had previously been an Esso dealer. Mr. Cooley before he took over the Atlantic station had previously been a successful insurance salesman. I felt that would give the prospect a chance to talk to individuals who had had different starts in business.

3452 Q. Was TBA discussed in your interview with the dealer candidates?

A. Yes, it was.

Q. What did you tell them about it?

A. We told them we had a TBA program in the South-eastern tier specifically with Goodyear Tire and Rubber. We felt it was a good program, we wanted the prospect to understand it; however, he was free to accept or reject it.

Q. I show you Commission's Exhibit 207. This is a letter over the regional manager's signature, and addressed to "All Atlantic Dealers," entitled "No Forcing." I ask you whether that letter, whether it was the practice in your district to deliver that letter to dealers when they signed a lease.

A. Absolutely. This one is signed by the Philadelphia regional manager, but ours, of course, was signed by New York, and that was attached to the lease papers.

Q. And who was the New York regional manager at that time?

A. Mr. G. V. Ostrander.

Q. Now, Mr. Detwiler, does Atlantic have an interest in the business success of its leases?

A. Very much so.

Q. What is that interest?

A. Our dealers have to be successful, have to grow, and increase their sales of products, before we are successful.

Q. When Atlantic loses a dealer, does it cost 3453 Atlantic money?

A. It certainly does. We run into different problems when that occurs. If the outgoing dealer goes down the street to a competitive station and has a good personal following, he takes that along with him. We then have to start searching for a replacement, we have to train him, and then install him, all of which costs money, and there is a loss of gallons in that change-over.

Q. What does it cost on the average to train a replacement?

A. A minimum of seven to eight hundred dollars, and I am basing that on the actual out-of-pocket expenses we have in connection with training the dealer prospect.

Q. Dealers do, however, occasionally, leave Atlantic; is that not right?

A. That is right.

Q. What are the principal reasons for which they do that?

A. One of the main reasons is that they find they don't dislike—they don't like the business, or their wife doesn't like them to be in the business because of the hours away from home that are required. The dealer may find out

that he just can't manage men, can't manage his finances. A major problem in dealer operation is for the dealer to extend too much personal credit, which can bring about failure, probably quicker than anything else.

Then, you have the normal amount of illness, death, 3454 incidents, which also cause the end of a dealership.

Q. In such cases, is it Atlantic's policy to permit the lessee to leave in the middle of his term?

A. Yes, because if he has made that decision, we want to replace him as soon as we can. His hundred percent interest and his heart is not in the business. In those instances, we would accomplish that by mutual consent cancellation.

Q. In such cases, when a dealer goes out and a new dealer comes in, in your experience does the new dealer generally buy the old dealer's stock?

A. Generally, he does, providing it is salable, in good condition.

Q. Does he generally buy regardless of brand?

A. Yes, sir.

Q. What price does he generally pay for it?

A. He generally pays the same price the outgoing dealer paid for it. Again, providing it is in salable condition.

Q. In your experience do you know of any instances in which Atlantic itself refused to renew a lease or cancelled a lease when the dealer wished to stay on?

A. No, not when he wished to stay on. I can recall one instance where we did not want to renew, specifically. It involved a dealer by the name of George Shannon, Watkins Glen.

Q. What was the reason for that?

A. Mr. Shannon ran an absentee operation. He 3455 was a very likable, affable, individual. He was very active in community affairs in Watkins Glen, but he

also ran a taxi business out of the service station, and he had an interest in an undertaking business in town, so that he just wasn't around the station very much, and what brought that problem to a head was that he would not hire capable employees to run the station while he was gone.

Q. Was TBA a factor in his, in your disagreement with Mr. Shannon?

A. No, sir; in fact, as I recall, he bought certain items from the Goodyear supply store.

Q. Was Atlantic's three-year lease policy in operation, in effect, in your district?

A. That is right, and that, as you recall, is extended to a dealer after he has been in business for two years, a two-year period.

Q. Now, under that policy, if Atlantic wishes to cancel a lease, is it required to send a written warning letter?

A. Yes, sir; it is.

Q. Do you recall any such warning letters being sent while you were in your district?

A. I recall only one, Mr. Ballard. I think it was in 1955, and involved a dealer by the name of Duane Olthof, in Elmira.

Q. Did Mr. Olthof correct the deficiencies then?

A. As I recall, he did. The specific deficiency 3456 spelled out in the letter was that of housekeeping and Olthof left us, at the end of the lease expiration period, and went down the street and opened an Esso station.

Q. Is it a practice in the southeastern tier district for new Atlantic sales personnel to attend the dealer training course?

A. Yes, sir.

Q. And does Atlantic also attempt to try to have new dealers, lessee dealers, attend that course?

A. We attempt to have not only new lessee dealers attend it, but we also try to get competitive dealers, and our existing dealers to attend an abbreviated version of it.

Q. When you say "competitive dealers," you mean men who have had previous experience with other companies?

A. In competitive stations; that is correct.

Q. But they, when they attend this course, are going to be Atlantic dealers?

A. That is right.

Q. You don't invite—

A. (Interposing.) We are not training competitive dealers. I didn't mean to give that impression.

Q. Mr. Detwiler, when you were explaining the Atlantic-Goodyear TBA program to a dealer candidate, what were the advantages of that program that you would point out to the dealer candidate?

3457 A. We felt the advantages to the dealer candidate were many. It was a high quality product, manufactured by a reputable company. It was a nationally advertised product. It had excellent acceptance on the part of the public, and, incidentally, very good acceptance in the southeastern tier area. Goodyear products cover the complete line. They are competitively priced. The Goodyear store was handy as a source of supply for the dealer. They had excellent sales promotion, advertising helps. We just sincerely felt that it was a good program, and one which the dealer prospect should certainly consider.

Q. In your experience, is some sort of TBA essential to some sort of operation in the modern station?

A. Absolutely, just as is the service the dealer must render or have available for his customers, as experienced by the lubrications, washes, service work in the bays.

Q. Do the other oil companies that are competitive with Atlantic in the southeastern tier district offer TBA programs?

A. Yes.

Mr. Kelaher: Objection, your Honor. We are getting info the TBA programs of other oil companies. What is the purpose of that?

Hearing Examiner Kolb: Objection overruled. That is what he has been doing all the time in this case.

Mr. Kelaher: This is the first time they have gone 3458 into this phase of the case, the other oil companies.

Mr. Mason: Will you stipulate that is out of the case?

Hearing Examiner Kolb: I have overruled the objection.

Mr. Ballard: Would you read the question.

(The reporter read as follows: "Do the other oil companies that are competitive with Atlantic in the southeastern tier district offer TBA programs?")

The Witness: Yes, they do.

By Mr. Ballard:

Q. Would Atlantic attract dealers to its franchise if it didn't offer a TBA program?

A. I don't think so, certainly not the most desirable dealer prospects.

Q. Are there other TBA suppliers, and by that I mean TBA suppliers, other than Goodyear, calling on Atlantic dealers in the southeastern tier district?

A. Yes, sir, there are. There are approximately seven or eight who sell specifically tires. There are four who handle batteries. And then there are approximately eight who handle accessories and, incidentally, four of those handling accessories are the same four that handle the batteries.

Q. In other words, it is divided between the people who handle batteries and those who handle the accessories?

3459 A. That is correct.

Q. The tire suppliers you mentioned, do they handle batteries, to your knowledge?

A. Not to the best of my knowledge.

Q. What about accessories, do they handle that?

A. I don't recall so, Mr. Ballard. They were mainly tire suppliers.

Q. In your capacity as a sales supervisor, and previous to that as a salesman, you, of course, visited Atlantic dealers at their stations?

A. That is right.

Q. Did you see at the stations any non-sponsored TBA on display?

A. Yes, sir.

Q. Would you see it in many stations?

A. You would see it in all stations. I don't recall seeing any station where only sponsored TBA was displayed.

Q. Did you also—you also, of course, on occasion saw Goodyear on display?

A. That is right.

Q. Some stations, did you see some stations handling a good deal of Goodyear?

A. Yes, it would vary.

Q. Would there be any difference in the pattern between lessee stations and contract stations of the full 3460 facility type?

A. No, basically no; because both were being called on by our salesmen, and Goodyear.

Q. Now, I think you have told us that at the end of your stay in the southeastern tier, there were two sales supervisors, three promotable dealer salesmen, between two and five service salesmen, and two general salesmen?

A. That is right.

Q. About what percent of their time would they spend assisting the sale of Goodyear TBA?

A. I would say ten to fifteen percent, minimum.

Q. There also was a regional TBA coordinator in that region?

A. That is correct. He operated out of regional headquarters, which was Syracuse.

Q. What was his name?

A. L. K. Maisel.

Q. And he spent full time on TBA?

A. Yes, and he spent a lot of time visiting the various districts and, in turn, we had him a fair share of the time in the southeastern tier.

Q. Did Atlantic open dealer clinics in that region?

A. Yes, we did.

Q. Did it conduct dealer meetings?

A. Yes.

3461 Q. Did those clinics and meetings, on occasion, deal with Goodyear TBA?

A. Yes, Goodyear products would be used as props in carrying out the particular message that was to be given to the dealer and their employees at that particular meeting.

Q. In your experience, is it helpful to the sale of Goodyear tires and batteries and accessories to have them used as props in those meetings?

A. I think it is certainly logical to use them. Certainly training is necessary, product information, changes, construction of items, and in using props to do that, it would certainly seem logical to me we would use Goodyear.

Q. Does it help the sale of Goodyear products to use Goodyear in that capacity?

A. Yes, because a man has to understand the features of his product, in order to be able to sell it.

Q. Where an Atlantic salesman, under your supervision, was calling on an Atlantic dealer who was handling Goodyear, what services would that salesman perform for the dealer in respect of Goodyear?

A. He would undoubtedly check stock when he got into the station to determine whether the dealer had a balanced stock of items. He would write orders. He would pass along product information, assist in promotions, assist the dealer, if requested, on solicitation, 3462 and working out his advertising. Perhaps the dealer had new employees and the salesman would attempt to help the dealer train his employees in that specific endeavor.

Q. By that you mean in respect of Goodyear?

A. That is right.

Q. Was it part of the job to know the price that Goodyear was charging, Goodyear supply point was charging?

A. It was part of the salesman's job. I wasn't too familiar with the prices.

• • • • •  
3465 By Mr. Ballard:

Q. Now your present position is dealer training coordinator?

A. That is correct.

Q. What are your responsibilities in that job?

A. To coordinate the dealer training activities in our six marketing regions.

Q. I think you have already stated Atlantic's policies as to new sales employees, but perhaps you better—I will ask you, what is Atlantic's policies as to all its regions toward the training of new sales employees?

A. Every new sales employee must attend the dealer training school as part of his basic training.

Q. And I think you have also stated that—well, what is the policy with regard to new dealers, and now I am speaking company-wide, not simply this district?

A. We attempt to get all of our new dealers to attend the dealer training school. We also attempt to get our

experienced dealers to attend an abbreviated version of that dealer training school.

Q. Is the school open to contract dealers as well?

A. Yes, sir.

Q. Have you, yourself, observed these schools in operation?

A. Yes, I have.

Q. Have you ever taught in them?

A. I taught financial management in the regional 3466 school in Syracuse, while I was a sales supervisor in the Southeastern Tier.

Q. Are the schools substantially the same in the various regions?

A. Yes, they are, they all follow similar agendas, and use similar material. I guess the main difference would be in this field that we are discussing today, TBA, where three of the regions, New England, New York, Philadelphia-New Jersey, sponsor the Goodyear line and the other three regions sponsor Firestone.

Q. Is the TBA program explained in the training course?

A. Yes, it is; there is a script which spells that out specifically.

Mr. Ballard: Will you mark this exhibit for identification for me as Atlantic's Exhibit 20?

Hearing Examiner Kolb: It may be marked Respondent Atlantic's Exhibit 20 for identification.

(The document referred to was marked Respondent Atlantic's Exhibit 20 for identification.)

By Mr. Ballard:

Q. I am showing you this booklet entitled "TBA Program" which has been marked A-20 and ask you if that is the script that is used in the training schools at this time?

A. Yes, sir; it is.

Q. I notice that this particular script was revised 3467 in 1957. Are there any substantial differences between this and the previous script?

A. No, sir. I have checked this revision and except for changes of a word here and there, it follows the same basic procedure.

Q. Has there been any change in the description of the TBA policies of Atlantic?

A. No, sir.

Q. Now, through this script there are blanks with the word "Name" in them. I take it that in the New York, New England, and Philadelphia-New Jersey regions the word "Goodyear" would be put in where the word "Name" appears?

A. That is right, and "Firestone" in the other three regions.

Q. This is the script that the instructors use in talking to the trainees, is that correct?

A. That is correct.

Q. Did Atlantic prepare this script?

A. Yes, sir.

Incidentally, trying to find the page, the TBA policies is specifically spelled out as to acceptance or rejection, on page 7.

Mr. Kelaher: I think that answer is a little premature.

3468 By Mr. Ballard:

Q. Does the curriculum in those training schools also include a study of the sponsored TBA line items?

A. Yes, there is another script on TBA or tires and tubes orientation, which goes into more details about product construction, sales features, et cetera.

Mr. Ballard: May I have this marked Respondent A-21 for identification?

Hearing Examiner Kolb: It may be so marked.

(The document referred to was marked Respondent Atlantic's Exhibit 21 for identification.)

By Mr. Ballard:

Q. I show you a script or a document marked Respondent's Exhibit A-21 and ask you if that is the script on tires and tubes to which you just referred?

A. Yes, it is.

Q. And this script is used in the regions where Atlantic sponsored Goodyear, is that right?

A. That is correct.

Q. Was this script prepared by Atlantic?

A. Yes, sir.

Q. Is this script—it is followed by the instructors, just as the other one is?

A. That is correct.

Q. What do the instructors use for a battery script? 3469 A. In the battery script we have a manual which

is put out by the Association of American Battery Manufacturers and that is the basis for instruction on batteries.

Q. Does the training department, you and your staff, also work on dealer training clinics?

A. Yes, sir; they do. It is our responsibility to make up those clinic packages and make them available to the field.

Q. Do those clinics relate—do some or any of those clinics relate to Goodyear TBA?

A. Some do; yes, sir.

Q. Could you give us an example, for instance?

A. Well, specifically, the clinic on tires, clinic on batteries, clinic on motor oil.

Q. Motor oil would not be TBA?

A. I beg your pardon. I was thinking of accessories items like air filters, motor oil cartridges.

Q. Who does the instruction? Whose employees do the instruction work in those clinics?

A. Atlantic's employees, and there may be Goodyear personnel there, if it involves products requiring specific explanation or a technical man to answer questions. It might be the supplier of the particular product.

Q. Would that be say DuPont or someone like that?

A. That is right.

3470 Q. I think you may have covered this. Who writes the scripts for those clinics?

A. We write them, we get the basic information, of course, from the particular manufacturer or supplier. But we prepare the scripts.

Q. Do you and your assistants ever make follow-up calls to trainees in their stations?

A. Yes, sir. The regional training coordinator, one to each region, and his assistants, make regular follow-up calls on graduated dealers, to note their progress.

Q. What is the primary purpose of that call?

A. To find out how the dealer is progressing, how he felt about the dealer training program, what criticism he might have had as to how we should have emphasized one subject more than the other, to improve it.

Q. You do sometimes get criticisms of your training program from your dealers?

A. Yes, sir, we feel that is healthy.

Q. Has any dealer ever complained that the TBA policies told to him in the school was not being followed in the field?

A. Not to my knowledge, Mr. Ballard.

Mr. Ballard: I have no further questions and I would like to offer in evidence Atlantic's Exhibits 20 and 21.

Mr. Kelaher: No objection.

3471 Hearing Examiner Kolb: The documents will be received in evidence, Respondent's Exhibits A-20 and A-21.

(The documents heretofore marked RESPONDENT ATLANTIC'S EXHIBITS A-20 and A-21 for identification were received in evidence.)

Mr. Ballard: Your Honor, may I suggest the witness has been on the stand for the best part of an hour and he may have a break before cross-examination?

Hearing Examiner Kolb: All right.

We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Detwiler, you have been with Atlantic since July 1939, excepting for your service in the Navy?

A. That is correct.

Q. Were you familiar with the fact that the Federal Trade Commission was investigating TBA commission plans of Goodyear and Firestone, respectively, in or about 1952 or 1953?

A. Yes, sir.

Q. And you have been aware of that since that time?

A. That is right.

Q. In response to a question on direct examination, you referred to the fact that you have three dealer salesmen. Were you referring to those three as promotable dealer salesmen?

A. That is right.

Q. At the time you were sales supervisor in Binghamton?

A. That is correct.

Q. And two general salesmen, originally?

A. Yes.

Q. And two to five service salesmen?

A. That is right.

Q. Then the two general salesmen came under the supervision of the new sales supervisor, or the additional sales supervisor in 1956?

A. That is right.

Q. Now when you were asked what your responsibilities were as sales supervisor—you can correct me if I am incorrect—I understood you to say that primarily you are interested in a station dealer developing and selling petroleum products. Is that right?

A. I didn't use those words, but basically that is correct.

Q. And you made no reference to TBA?

A. No, nor did I to services, as such.

Q. And do you feel that it was part of your responsibility to assist station dealers in selling and developing TBA?

3473 A. Very definitely. I believe I qualified it at another point, Mr. Kelaher, that the sale of TBA was just as necessary as was the sale of other services as compared, let's say, to the fellow who just has a pump and pumps gas. You can't live on gas sales alone. Balance is what I was referring to.

Q. And isn't it a fact that in the New York region, Atlantic's leases were different for many years?

A. That is true.

Q. And under that lease that was in effect in New York region, Atlantic did get a percentage return on gross sales of Atlantic lessee dealers, including their sales of TBA?

A. That is correct, sales of everything, excluding gasoline, taxes excepted.

Q. Do you recall whether that type of lease was in effect when you went into that area or how long prior thereto it was in effect?

A. Mr. Kelaher, to the best of my knowledge it was in

effect when I first went to the New York region, back in 1940.

Q. Now you were also asked some questions concerning the availability of lessee dealers and you testified they are now scarce. Isn't it also true that during the post-war two years, sort of thereafter, it was just the opposite? At least there wasn't a scarcity of dealers at that time.

3474 A. Well, the only year period that I can account for, Mr. Kelaher, I mentioned that I got out of the Navy in December 1945, so I assume you are referring to—

Q. Starting with that period.

A. '46, '47, '48.

Q. Yes.

A. Well, as I recall, we had our problems then. True, there were men returning from the Services but to find a top notch dealer has always been a difficult thing to do.

Q. But you didn't have the problem then you have today, did you, with respect to dealer availability?

A. It is a matter of degree, Mr. Kelaher. I think it has always been an A-No. 1 problem for any salesman.

Q. Now you also testified that several of your dealers were in the \$12,000 and \$15,000 category. Are you referring to net income?

A. That is right.

Q. Per year, I assume. Your answer indicates that probably is high for that area. Is that correct?

A. Well, I mentioned that merely to show that there are specific instances of a couple of dealers who netted between \$12,000 and \$15,000 and I think that is recognized as a good income.

Q. It is also true there are numerous dealers who average less than that, isn't it?

3475 A. Absolutely.

Q. In fact, the average is less than that?

A. That is right. To be specific, I would say the average up there was probably in the neighborhood of \$6,000, \$6,500.

Q. You stated on direct that Atlantic has an interest in the business success of the lessees. Isn't your primary concern as an Atlantic representative to obtain a return on Atlantic's investment in its lessee stations?

A. No, I wouldn't say that is my prime return as a salesman or a sales supervisor. My prime interest, I beg your pardon. My prime interest is to see that sales are developed and we are not in the real estate business. We are in it only to have facilities available for dealers.

Q. Isn't it a fact that with 65 lessee stations, Atlantic's investment in those stations would run in excess of \$3,000,000, approximately?

A. Well, it would be a considerable amount of money.

Q. And isn't it a fact that Atlantic's interest is to maintain dealers in these stations and to achieve maximum income from these stations in order to get a return on that investment in the stations?

Mr. Ballard: I will object to that question, your Honor. That question went for a half hour and there were a great many questions involved in it.

3476 Mr. Kelaher: I think he understands the question.

Hearing Examiner Kolb: Do you understand the question?

Mr. Ballard: Which part of the question do you think he understands?

The Witness: I think there were three specifics there, weren't there?

Hearing Examiner Kolb: Read the question.

(Question read.)

Mr. Ballard: I submit, your Honor, there are a great many questions involved there.

3477 Hearing Examiner Kolb: I think the witness can answer. The objection is overruled.

The Witness: Our maximum interest is to have successful dealers in those stations who are growing so that Atlantic's income, if you will, both from the sales of products and return on the investment, increases.

By Mr. Kelaher:

Q. You also testified with respect to Mr. George Shannon, of Watkins Glenn, one of your lessee dealers.

A. That is right.

Q. Was a warning letter sent to Mr. Shannon?

A. I don't recall one being sent to him, Mr. Kelaher.

Q. Was his lease cancelled? Do you recall the length of time he was given under his lease cancellation notice to get out of the station?

A. It wasn't cancelled. It was the end of a lease period, Mr. Kelaher. It was not renewed.

Q. I see.

A. And he had been in that station for many years.

Q. In your direct testimony—I may have misunderstood you—but I understood you to say it was cancelled. But it was terminated?

A. It was not renewed. That is right. It was not renewed at the end of the lease period.

Q. What TBA did Mr. Shannon carry?

3478 A. He carried some Goodyear, Mr. Kelaher, and other non-sponsored products.

Q. Was anything ever said to him about the non-sponsored TBA?

A. No, sir.

Q. That had nothing to do with the termination of the lease?

A. No, I tried to explain it was diversified interest on his part, and absentee operation, and what brought it to a point was the fact that while he was away from the station

as much as he was, he did not have capable employees there to serve the public.

Q. He always had employees at the station, though, didn't he, when he was away?

A. Yes, sir.

Q. You also testified with respect to a warning letter sent to Mr. Olthrop; for purposes of the record, I ask you to look at Commission's Exhibit 269 and ask you if that isn't the letter to which you referred (handing document to the witness).

A. Yes, sir, that looks like the letter.

Q. I am also going to ask you about several other warning letters in the record to ascertain whether they were in your district—the town of Irondequoit.

A. No, that is north of Rochester, and that is up on Lake Ontario, specifically in the Rochester district.

Q. Saranac Lake, New York.

3479 A. That is either Albany or Syracuse. It is in the Adirondack section.

Q. Utica, New York.

A. That is in the Syracuse district.

Q. Would that be in the southeastern tier?

A. No.

Q. The southeastern tier would be otherwise known as the Binghamton district, is that correct?

A. That is right.

Q. Mr. Detwiler, on direct examination you were asked a question concerning the Goodyear TBA program and the advantages to Atlantic dealers in the southeastern tier.

A. Yes.

Q. Among other things you stated that it was a high quality product. It was nationally advertised, had excellent acceptance, especially in the southeastern tier, covers the complete line, was competitively priced. Goodyear stores were handy and there was excellent advertising material. Do you recall that?

A. Yes, sir.

Q. Now, isn't it true that the same thing applies to other brands, such as Firestone, for one example?

A. Yes, I would say so.

Q. Isn't it true that the same thing applies to Goodrich or U. S., for example?

3480 A. Goodrich, Mr. Kelaher. I don't believe U. S. was active up there.

Q. But they both have high quality products, are nationally advertised, and so on; isn't that true?

A. That is true about the product; however, in the Binghamton area Goodyear was the only one that had a service store, as such, in Binghamton. The other nationally advertised brands that you mentioned were represented, but not by the supplier company direct. Do you follow me?

Q. But there were distributors of Firestone products in Binghamton?

A. That is correct.

Q. Do you remember the names of any of the Firestone distributors in Binghamton or that area?

A. I think T. J. Byrne, Fitzsimmons—I believe they were the only two.

Q. When you describe the Binghamton district, you use the Pennsylvania-New York state line as the diagonal under the half-moon you described; is that correct?

A. That is right.

Q. Now, you were not implying that this high acceptance of Goodyear stopped at that state line, were you?

A. I wasn't implying that. I said the acceptance was good in the Binghamton district.

Q. Wouldn't it be just as good on the other side of 3481 the Pennsylvania border as on the New York side?

I am not familiar with the other side, Mr. Kelaher. You have got a distance, geographically, of about 60 miles

down to the next city of any size, which is Scranton, and I had no occasion to get down there or—

Q. (Interposing.) Isn't it a fact that all the towns on the south side of that state line are in the Atlantic eastern region and that Firestone is the sponsored TBA program there?

A. That is correct.

Q. And I believe it is also a fact that Mr. Fitzsimmons' company is a Firestone supply point for Atlantic stations across the line?

A. That could be, I didn't realize it.

Q. Now, in your position now as dealer training co-ordinator, when you are talking to dealers, Atlantic dealers, south of the New York-Pennsylvania state line, you tell them the same thing about Firestone as you tell them about Goodyear on the north side of the line; is that correct?

A. That is correct.

Q. Now, no questions were asked about this on direct examination, but I would like to ask you a question or two.

Mr. Ballard: Your Honor, I object to the question, because he has already disqualified it. It is bound to be outside the scope of the direct.

Mr. Kelaher: I will ask the question and then you 3482 can object.

By Mr. Kelaher:

Q. Aren't Atlantic service stations in the southeastern tier identified with Goodyear window valances, primarily, on the stations, and with the Goodyear outdoor pole sign on the premises?

Mr. Ballard: I don't think that question is objectionable.

Mr. Kelaher: I don't think so either.

Mr. Ballard: It was just your introduction that made it seem so.

The Witness: Most of them are, Mr. Kelaher. However, there is other advertising.

3483 By Mr. Kelaher:

Q. I am talking about window valances, and outdoor pole signs.

A. I am coming back to you on that. You referred specifically to window valances: There is a station over in Elmira, a lessee station, that has Firestone valances and Firestone pole sign.

Q. Is that the only one in the whole tier?

A. That is the most striking one, because it is solidly Firestone.

Q. Is that the only Atlantic station in the whole southern tier that you know of with that identification?

A. We are referring strictly to window valances and pole signs?

Q. I am referring to the one you just mentioned, the Firestone window valances and outdoor sign.

A. That is the only one that has both of those specific means of identification.

Q. In the whole southern tier?

A. Through the whole southern tier.

Q. Isn't it a fact that south of the New York-Pennsylvania line, that Atlantic stations have the Firestone window valances and Firestone outdoor sign primarily?

A. I believe so, those that I have passed, I think I have seen that, but they are few in number.

3484 Q. Now in connection with some questions concerning the type of TBA you see in Atlantic stations in the southern tier, I understood you to say that on occasions you would see Goodyear. Isn't it a fact that Goodyear TBA is the principal TBA handled in the southern tier by Atlantic stations?

A. Mr. Kelaher, I don't know how it would split down,

percentage-wise, because it varies by station, by product.

Q. You didn't mean to imply—when you stated "on occasion," wasn't that somewhat of an understatement? You find Goodyear TBA in Atlantic service stations in the southern tier, don't you?

A. You find both Goodyear TBA and non-sponsored TBA.

Q. I am asking about Goodyear TBA first.

A. In most of the stations.

Q. Now with respect to the time spent by servicemen, you estimated that 10 to 15 percent of the time of a salesman, rather, was spent by the salesman assisting dealers on TBA?

A. I stated that as a minimum, I believe.

Q. As a minimum, I am sorry.

A. That is correct.

Q. Are you grouping all classes of salesmen in that average? Or, let's put it this way: Does that average apply to service salesmen?

A. Yes, sir, it does.

Q. Does it apply to promotable dealer salesmen?

3485 A. Yes, sir.

Q. And to general salesmen?

A. Yes, sir.

Q. Now, isn't some of that time spent explaining to dealers the changes such as at the time the tubeless tire came out, or dry charged batteries came out?

A. Product information?

Q. Yes.

A. Yes, sir.

Q. Wouldn't that time be spent—that time is spent regardless of the brand of TBA involved, isn't that true?

A. Yes, that is true. However, certain suppliers make those changes at certain times, Mr. Kelaher. The only point I was trying to make was that when you said how

much time, I said a minimum of 10 to 15 percent was spent on a combination of things that they do for the dealer, including product information.

Q. And you didn't mean that to indicate that the 10 to 15 percent minimum applied to promoting or assisting in the sale of Goodyear TBA only, did you?

A. Yes, I would say on the promotion of Goodyear TBA.

Q. Isn't it necessary for your service station dealers to know certain things about TBA, regardless of brand?

A. Sure it is; they should know it.

Q. Wouldn't these services have to be rendered by 3486 Atlantic anyway, with respect to many of them, regardless of brand?

A. To a certain degree, yes.

Q. Isn't it true that in your region as in others, certain of your salesmen up there are on a bonus system with respect to TBA?

A. Yes, sir, I believe that came into effect shortly before I left.

Q. Does that include—it does include promotable dealer salesmen, does it not?

A. I believe that is all it includes, or was, as of that time. As I say, that was shortly before I left there.

Q. Without going into Respondent's exhibit A-20, which is the TBA Program-Dealer Training Program, you stated that this was checked with a previous script, if I recall?

A. Yes, sir.

Q. This exhibit A-20 was revised in 1957. What was the date of the previous script?

A. I believe it was 1953, which I think coincides with the date on the other script there.

Q. Did you check it with any script prior to 1953?

A. No, I don't know whether—no, I did not.

Q. I show you also Respondent's exhibit A-21, which is

the orientation script on tires and tubes in the Goodyear regions.

A. Yes.

Q. Do you have a similar script for orientation on 3487 tires and tubes in the Firestone regions?

A. Yes, sir.

Q. Is that basically the same as the one in the Goodyear regions with a change in names only, or primarily?

A. It is basically the same in outline or construction, unlike the other one which can be adapted to either region, because in this we go into more detail as to levels, lines, et cetera. There is a separate script.

Mr. Kelaher: Would it be possible to have that introduced into the record?

Mr. Ballard: I will be glad to furnish it to you, Mr. Kelaher, but it is not part of my case.

Mr. Kelaher: I ask counsel to furnish me with a copy of Firestone's script.

Mr. Ballard: I will be glad to do so.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions, your Honor.

Hearing Examiner Kolb: Thank you, that is all.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn at this time until 9:30 tomorrow morning.

3489 Hearing Examiner Kolb: The hearing will be in order.

Mr. Francis Ballard: Mr. Hayes?

THOMAS A. HAYES, JR. was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

*Direct Examination.*

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Thomas A. Hayes, Jr., 542 Clairmont Road, Springfield, Pennsylvania.

By Mr. Francis Ballard:

Q. You are presently a salesman for the Atlantic Refining Company?

A. Yes.

Q. What is your territory?

A. It is in Delaware County.

Q. How long have you been in the Delaware County area?

A. Since 1952.

Q. During that period you were a salesman in that area, for them?

A. Yes.

3490 Q. As a salesman, sir, am I not right in saying that it is part of your duties to sell Goodyear TBA?

A. That is right.

Q. Would you state, please, what you understand to be Atlantic's policies with respect to the purchases of Goodyear TBA by its dealers?

A. Well, it is our policy to offer Goodyear TBA to our dealers, for their purchase. It is also our policy to offer them the option of accepting or rejecting the Goodyear program.

Q. How long have you known this to be Atlantic's policy?

A. Well, since I have been a salesman.

Mr. Francis Ballard: Mr. Kelaher, to save time would you stipulate with me that this man has received and read the three exhibits, the numbers of which I can give for the record, the letters?

Mr. Kelaher: I have no objection.

Mr. Francis Ballard: It is stipulated that Mr. Hayes has received and read Exhibits 150, 206, and 207.

By Mr. Francis Ballard:

Q. Those exhibits, Mr. Hayes, are the letters from Mr. Colley to Atlantic dealers, stating Atlantic's policy. Have you heard that policy stated in any other fashion?

A. Yes.

Q. Could you tell us how?

3491 A. Well, it has been stated at dealer meetings, that we have held, at sales meetings that we have held, and it has been stated to me individually several times.

Q. I want you to go back to July of 1952, Mr. Hayes, when you started as a salesman and tell me whether or not you yourself have ever violated that policy?

A. No, I haven't.

Q. Mr. Hayes, do you know a gentleman named Francis J. Ballaron?

A. Yes.

Q. He was at one time an Atlantic lessee?

A. That is right.

Q. Were you ever his salesman?

A. Yes.

Q. Can you tell us for how long a period of time?

A. Well, I selected Mr. Ballaron for a service station in 1953.

Q. September 1953?

A. That is right. And we put him into the station.

I was his salesman for about two and a half years.

Q. Let me interrupt again. Just tell us where the station was.

A. The station was in Newton Square.

Q. He was in that station you say for about two and a half years?

A. That is right.

3492-3494 Q. Did you at any time make a recommendation that Mr. Ballaron's lease not be renewed?

A. Yes, I did.

Q. Would you tell us the basis for that recommendation?

A. Well, from the beginning Mr. Ballaron proved a rather unsatisfactory dealer. He was a poor business man in a number of respects. The station did not meet our standards for cleanliness. We received many complaints about the location from customers, concerning poor service, attendance, and the dealer workout uniforms. We received several complaints about abusive language used on the station premises. Mr. Ballaron several times got into financial difficulty, gave us a number of bad checks.

Q. When you say "us", you mean Atlantic Refining?

A. Atlantic, yes. And generally speaking, his performance as a dealer was not satisfactory, and for those reasons I recommended that we not renew his lease.

Q. Mr. Hayes, during that two and a half year period, did Mr. Ballaron restrict his purchases of TBA to the Goodyear sponsored line?

A. No, he didn't.

Q. Did you know he was buying outside Goodyear TBA?

A. Yes, I did.

Q. Sir, I want you to go back to this recommendation that you made that his lease not be renewed.

3495 A. Yes.

Q. Did the fact that Mr. Ballaron bought some

TBA on the outside have any bearing on your recommendation?

A. No, it didn't.

Q. To whom did you communicate this recommendation that the lease not be renewed?

A. To my supervisor, who was Mr. George Arnholt.

Q. If you know, would you tell us how Mr. Ballaron found out that the recommendation had been made?

A. Mr. Arnholt and I visited Mr. Ballaron at his station and discussed it with him.

Q. In what detail did you discuss it, how long did the conversation last?

A. It was a very lengthy conversation, which lasted, to the best of my knowledge, from between two and three hours. We discussed Mr. Ballaron's performance with him, and told him at the end of that discussion that we were recommending that his lease not be renewed.

Q. Was this the first occasion, Mr. Hayes, that you had had to observe the relationship between Mr. Arnholt and Mr. Ballaron?

A. No.

Q. You had had prior occasions?

A. Yes.

Q. Would you just take a moment now and tell us 3496 what your observation of that relationship was?

Mr. Kelaher: Your Honor, I am going to object to testimony of this character as to his observation as to the relationship between two other men.

Hearing Examiner Kolb: Well, he can testify as to what he knows, but I don't think he can give any conversations or statements made by either party.

Mr. Francis Ballard: I was not seeking any conversation or statement, sir.

Hearing Examiner Kolb: All right. Objection overruled.

The Witness: I would say that there seemed to be a personality clash between Mr. Arnholt and Mr. Ballaron.

Q. Now, I believe your testimony to date, Mr. Hayes, brings us up to the fall of 1955?

A. That is right.

Q. At which time you made this recommendation?

A. Yes.

Q. Did Ballaron stay in that station?

A. Yes, he did.

Q. Did he continue to be one of the salesmen on whom you called?

A. Yes, he was.

Q. I mean dealers, excuse me.

How long did Mr. Ballaron stay in the station 3497 after the fall of 1955?

A. I believe about a year and a half.

Q. Was his lease cancelled?

A. No, it wasn't.

Q. Would you tell—were you still his salesman?

A. Yes, I was.

Q. Would you tell the Examiner the circumstances under which he left the station?

A. Mr. Ballaron left the station under what we term a mutual consent of cancellation. This is a form that we use when the dealer wishes to be relieved of his station. It was Mr. Ballaron's wish that we release him of this service station, which of course we did.

Q. Now did he, Mr. Ballaron, tell you why he wanted to be released from that station?

A. Yes, he did.

Q. Would you tell us what he told you?

A. His reasons, as he told me, were that, No. 1, he was having difficulty with his sons, who worked there with him, there was some family disagreement about the operation of the station. No. 2, Mr. Ballaron said he had been

advised by his doctor that he had best get out of the service station business. And No. 3, financial problems, which were still taking place.

Q. Can you tell us the reasons why Atlantic was 3498 willing to enter into a mutual cancellation?

A. Yes, because as far as we were concerned, he was still an unsatisfactory dealer for the same reasons I mentioned earlier.

Q. Mr. Hayes, as you know, Mr. Ballaron testified in this proceeding back in June 1957. I am going to read you a question and answer from his testimony, at page 867 of the record. And I will ask you some questions about this. The question was:

"Did anyone tell you what to buy or sell at the last station?"

"Answer: Yes, they did. You couldn't sell anything in that station except what you bought from Goodyear or DuPont or an Atlantic dealer can't sell anything but Atlantic products and the one that is represented are still supplying. When I went to buy a Firestone or Goodrich tire or anything like that, that was against the rules of that station. I know that, anybody knows that, the salesman knew it. That is why I left the station."

Mr. Hayes, is that testimony true?

A. No.

3499 Q. Was it against the rules of that station that he buy Firestone or Goodrich tires?

A. No.

Q. Did he, in fact, buy those tires?

A. Yes, he did.

Q. Was it because of those purchases of non-Goodyear TBA that he left the station?

A. No, it wasn't.

Q. Now, sir, another gentleman, Mr. Iacono, do you know that gentleman?

- A. Yes, I do.
- Q. Could you help me in pronouncing the name?
- A. It is Iacono.
- Q. Well, you know him?
- A. Yes.
- Q. And you were his salesman for a time?
- A. That is right.
- Q. He was an Atlantic lessee?
- A. Yes.
- Q. Can you tell us for how long a period of time you were his salesman?
- A. I was his salesman for about a year and a half.
- Q. Directing your attention, sir, to the fall of 1954, did you or did you not make any recommendation as to whether Mr. Iacono's lease should be renewed?
- 3500 A. Yes, I did.
- Q. What was your recommendation?
- A. I recommended that we not renew Mr. Iacono's lease, Atlantic.
- Q. Would you take a moment now and tell us the basis for that recommendation?
- Mr. Kelaher: Off the record.
- (Discussion off the record.)
- Hearing Examiner Kolb: On the record.

By Mr. Francis Ballard:

- Q. All right, proceed.
- A. We had had a number of problems with Mr. Iacono. To begin with, the station again did not meet our standards for cleanliness and appearance. We had had several complaints from the authorities in the area—this station was in Secane, Pennsylvania—and the Board of Health had contacted us regarding refuse and dirt around the service station through complaints of people living in the neighborhood.

Mr. Iacono had another business. He owned a stable and spent quite a bit of time at the other business, and in my opinion, didn't devote enough of his time to the service station business. He constantly worked without proper uniforms, employed what I thought were unqualified people to work in his station, youngsters who didn't know much about the service station business. He kept poor, inadequate records to reflect what was going on at his 3501 station, and, generally, was an unsatisfactory dealer in my eyes.

Q. While he was a dealer with Atlantic, did he buy non-Goodyear TBA?

A. Yes, he did.

Q. Were you aware of this fact?

A. Yes, I was.

Q. Once again I ask you: Go back to the fall of 1954 when you made the recommendation which you have told us about, and tell us whether or not that fact had anything to do with your recommendation.

A. No, it didn't.

Q. Is this the only lessee station that Iacono had had with Atlantic?

A. Yes, it is.

Q. Had the lease which you recommended not be renewed, had it been renewed at an earlier time?

A. Yes.

Q. And were you his salesman at the time of that earlier renewal?

A. Yes, I was.

Q. And at the time of the earlier renewal had Iacono been buying non-Goodyear TBA?

A. Yes, he did.

Q. Now, sir, we move on to another fellow, James 3502 Matthews. Do you recall that?

A. Yes.

Q. He was an Atlantic lessee?

A. Yes.

Q. You were his salesman for a period of time?

A. That is right.

Q. Do you remember how long a time that was?

A. To the best of my knowledge, about two or two and a half years.

Q. At that time where was his station located?

A. He was in Media, on the Baltimore Pike.

Q. During the two years he was your, one of your dealers, in the sense that you called on him, how were his operations at that station?

A. Very good.

Q. Could you tell us a little bit about that station? Is it unusual in any respect?

A. Yes, we had a very unusual case there, in that the former dealer at that station, whose name was Charles McCaffety, left our station and moved directly across the street into a brand new Esso service station. As a result, of course, Mr. McCaffety took some of the customers with him and it was necessary that our dealer, Matthews, keep on his toes at all times in order to hold the business at our Atlantic station. Mr. McCaffety was an excellent dealer also and gave Matthews very stiff competition.

Q. Would you have any idea, generally, of the inventory Mr. Matthews got?

A. Yes, he kept an inventory of approximately twelve or thirteen thousand dollars.

Q. In your experience, is that higher than usual?

A. Yes, it is higher than usual.

Q. That is a TBA inventory you are speaking of—excuse me, higher than usual, does that figure of twelve to thirteen thousand dollars, is that exclusively TBA or a portion of it only?

A. That is right, a portion.

Q. Was his TBA higher than ordinary?

A. Yes, a great deal higher.

Mr. Kelaher: What was the last question and answer.

(The reporter read the question and answer appearing on lines 13 and 14 of this page.)

By Mr. Francis Ballard:

Q. When Mr. McCaffety left to go across the street to take the Esso station, was it your job to fill the Atlantic station which he left?

A. Yes, it was.

Q. Was Mr. Matthews the first person you tried to get to take that station?

A. No.

3504 Q. How many others had you offered it to?

A. Two or three.

By Mr. Francis Ballard:

Q. Mr. Hayes, I believe you also know that Mr. Matthews testified in this proceeding, and at page 542 he stated as follows:

"In the fall of 1954 I purchased ten Auto-lite batteries, and I was told at that time not to buy any more or they would find somebody with enough money to buy me out and that would be the end of my lease."

Then, he was put this question:

"Who told you that?"

"A. Mr. Hayes."

In the fall of 1954 you were Mr. Matthews' salesman?

A. Yes.

Q. Did you ever make this statement to Mr. Matthews?

A. No.

Q. Do you recall the fact that in the fall of 1954 he did purchase ten Auto-lite batteries, do you know that?

A. Yes.

3505 Q. Did you have a conversation with him about them?

A. Yes, I did.

Q. Did you say that if he did not—that if he bought any more, you would find somebody to take his station?

A. No.

Mr. Francis Ballard: Cross-examine, Mr. Kelaher.

Mr. Kelaher: Your Honor, may I have a few minutes to review the testimony of the dealers about whom this gentleman is testifying?

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will come to order.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Hayes, how long have you been with Atlantic Refining Company?

A. Since July 1950.

Q. What was your first position with Atlantic?

A. I was a retail instructor.

Q. What does that mean, what were your duties there?

A. Well, the duties of a retail instructor were to work with a salesman in a given territory, in uniform, working in service stations, training dealers and dealers' employees in selling and performing the services related to the 3506 service station.

Q. In what area did you perform those duties?

A. In southeastern New Jersey.

Q. How long did you remain on that job?

A. One year.

Q. Then, what job did you assume?

A. Well, I then was given a job in our home office in Philadelphia as assistant to our regional marketing supervisor.

Q. Who was that at the time?

A. His name was Edwin Stanton.

Q. Was that—after that did you go on your job as a salesman.

A. Yes.

Q. About when did you start your duties as a salesman?

A. In July of 1952.

Q. And you were a promotable dealer salesman; is that right?

A. That is right.

Q. Have you been in the same territory since that time?

A. Well, I have been in the same general area. I haven't had the same group of dealers all that time.

Q. Did you state that was Delaware County, that was your area?

A. That is right.

Q. That includes Chester, and other—Chester on the south and goes north to some other—

3507 A. (Interposing.) Upper Darby.

Q. When you were a promotable dealer salesman—my questions are going to concern your period as a promotable dealer salesman—was your immediate supervisor Mr. Arnholt during all that time. Has he been your immediate supervisor during all that time?

A. Yes, he was until about three months ago. He is no longer.

Q. He is no longer your supervisor?

A. No, he is retired.

Q. Mr. Arnholt retired three months ago; is that right?

A. Yes.

Q. Now, you were asked some questions with respect to

Mr. Ballaron, and you said he was telling untruths when he testified here; is that correct?

A. That is right.

Q. Were you familiar with Mr. Ballaron's background when he became an Atlantic service station dealer?

A. Yes, I was.

Q. Did you know he had been in the Newton Square area for approximately 41 years?

A. Yes.

Q. Did you know he was very prominent in civic affairs in this community?

A. Yes.

3508 Q. Did you know he had been a scout master, fire chief, fire president, and had had other civic honors bestowed on him?

A. Yes.

Q. Did you know he served in World War I and World War II?

A. I know about War I, not World War II.

Q. Did you know certain members of his family served in World War II?

A. Yes.

By Mr. Kelaher:

Q. Now, you stated that you made a recommendation that his lease not be renewed, right?

A. Yes.

Q. That recommendation was made when?

A. I believe that was in September of 1955.

Q. And this is a fact, that you didn't give him any reason for making that recommendation? Isn't it a fact that you didn't tell him at that time that his lease would not be renewed?

Mr. Mason: Which question are you asking?

Mr. Kelaher: I was clarifying my original question.

3509 Hearing Examiner Kolb: You had better start again.

By Mr. Kelaher:

Q. At the time you made your recommendation to Atlantic that Mr. Ballaron's lease not be renewed, did you so advise him?

A. Yes.

Q. Did you give him the reasons why you were terminating his lease?

A. Yes.

Q. You have stated those reasons in your direct testimony. Is that correct?

A. That is right.

Q. Now, isn't it a fact that after your recommendation Atlantic offered Mr. Ballaron a three-year lease?

A. That is right.

Q. And he accepted the three-year lease?

A. That is right.

Q. So, your recommendation was overruled, apparently, wasn't it?

A. Yes, it was.

Q. You have listed a number of reasons as to why you thought he was an unsatisfactory dealer, haven't you?

A. Yes.

Q. And isn't it a fact that he is still an Atlantic dealer?

A. To the best of my knowledge he is, yes.

3510 Q. So, what you have said is that he, among other things, was having financial difficulties, passing bad checks; his performance was not satisfactory; he was using abusive and foul language; and, you threw everything in the book at him, didn't you? You said he was a very unsatisfactory dealer?

A. Yes.

Q. As soon as his lease was terminated he opened another Atlantic station. How do you square that with your testimony?

A. He didn't lease the second Atlantic station.

3511 Q. What difference does it make? Atlantic signed a contract with him, didn't they?

A. To the best of my knowledge they did.

Q. What you are saying here is purely your own personal opinion and not the opinion of Atlantic Refining Company, is it?

A. Well, I represent the Atlantic Refining Company and it is my job to make decisions such as that concerning the dealers I call.

Q. You have been consistently overruled with respect to Mr. Ballaron. Everything you said here today has been repudiated and refuted by Atlantic's relationships with Mr. Ballaron. Isn't that a fact?

Mr. Francis Ballard: I object, your Honor. I think this is argumentative.

Mr. Kelaher: This is cross-examination. I want to cross-examine.

Hearing Examiner Kolb: Objection overruled.

Mr. Kelaher: You can answer the question now.

3512 Mr. Francis Ballard: Can we have the question read?

(Question read.)

Mr. Mason: I submit that isn't a question, but an invitation to an argument.

Hearing Examiner Kolb: Overruled.

The Witness: I would say No.

By Mr. Kelaher:

Q. The answer is Yes, isn't it?

Mr. Francis Ballard: The witness just stated the answer is No.

Mr. Kelaher: Listen, you have a rare idea of cross-examination, my friend. I am stating to you that Atlantic has continued to negotiate contracts with Mr. Ballaron since the time of your recommendation; isn't that true?

The Witness: I am not sure of that.

By Mr. Kelaher:

Q. Don't you know he is still an Atlantic dealer, in Zieglererville, Pennsylvania?

A. I don't know that.

Q. The record here so states and you have made no inquiry, you don't know what happened to Mr. Ballaron after he left the other station?

A. Yes, I do.

Q. What happened?

3513 A. Mr. Ballaron then took an Atlantic contract location, but as to whether or not he still has it, I don't know.

Q. Now you are equivocating. But it is a fact, isn't it, that he did enter into a contract with Atlantic almost immediately after he discontinued being a lessee dealer in your area?

A. Yes.

Q. Now, isn't it also a fact that his sons, or at least one of his sons, went to that station with him?

A. Yes.

By Mr. Kelaher:

Q. On direct examination you were read an excerpt from Mr. Ballaron's testimony at page 867, I believe:

When you said that—do you recall that statement that was read to you by counsel?

3514 I will reread it to you. Beginning at line 11, page 767:

"Did anyone tell you what to buy or sell at the last station?

"Answer: Yes, they did. You couldn't sell anything to that station except what you bought from Goodyear or DuPont or an Atlantite dealer can't sell anything but Atlantic products and the one that is represented are still supplying them. When I went to buy Firestone or Goodrich tires or anything like that, that was against the rules of that station. I know that, anybody knows that, the salesman knew it. That is why I left the station."

You said that whole statement was untrue, didn't you?

A. Yes.

Q. What you are saying is that in your opinion it is untrue?

that statement is untrue, because it is against the policy

A. No, I am saying that to the best of my knowledge of our company as it has been explained to me and as I explain it to our dealers.

3516 By Mr. Kelaher:

Q. Now, let's turn to Mr. Iacono. He was also one of your Atlantic dealer salesmen, is that right; one of your Atlantic dealers, I should say?

A. Yes.

Q. Now, you made certain recommendations with respect to Mr. Iacono. Were you his dealer salesman in the fall of 1953 or December 1953?

A. Yes.

Q. And at that time did you also recommend that or did you recommend at that time that his lease be termi-

nated if he didn't make certain adjustments in the service station operation?

A. Yes.

Q. Now, at that time a letter was sent to Mr. Iacono. I will show you the letter. It is Commission's Exhibit 257-A, and ask you if this is the result of your recommendation to your superiors?

A. Yes.

Q. And have you also been apprised of Mr. Iacono's attorney's reply to Atlantic Refining Company in connection with that letter, Exhibit 257-B in this record. Have you ever seen this letter before?

A. Yes, I have.

Q. Isn't it a fact that after that letter was sent, 3517 Mr. Iacono remained in that station for some time?

A. Yes, he did.

Q. So, all the complaints you have itemized and categorized—strike that. So your recommendation at that time was also overruled, wasn't it?

A. Not exactly, no.

Q. What do you mean by that "not exactly"?

A. Well, we have these letters that you mentioned there, which we send to the dealer, which gives him 15 days to correct these deficiencies that we call to his attention, or else he is breaching his lease. In Mr. Iacono's case he corrected those deficiencies to our satisfaction within the period of time and, therefore, we determined that he had not breached his lease.

Q. Now, you have testified, as I understand your testimony, that—now, you say he corrected the deficiencies and then on direct examination you stated that was the reason you didn't recommend renewal of his lease at a later date. Is that the substance of your testimony?

A. Yes. They were corrected only temporarily.

Q. Was he sent another warning letter concerning these so-called deficiencies?

A. No.

Q. However, he remained in the station about one year after this warning letter was sent, did he not?

3518 A. I am not exactly sure of that.

Q. You have also testified concerning Mr. James Matthews. Do you recall that testimony?

A. Yes.

Q. Isn't it a fact that Mr. Matthews was an Atlantic lessee dealer for ten years, approximately?

A. Yes; I think so.

Q. Isn't it a fact that he was a very good dealer, and I think you have so stated?

A. Yes, I thought highly of him.

Q. Well, you made some remark about his inventory being high. You referred to a figure of approximately twelve or thirteen thousand dollars. As I understand your answer, that included gasoline, oil, everything in the station, twelve or thirteen thousand dollars. Is that right?

A. That would include gasoline, motor oil, tires, batteries, and accessories.

Q. Yes. And then you said his TBA inventory was higher than something, higher than ordinary?

A. Yes.

Q. Wasn't his station a fairly large station at that particular location he was in Media?

A. Yes.

Q. And isn't it a fact that that TBA inventory was almost 100 percent Goodyear?

3519 A. I am sorry, I didn't hear you.

Q. Isn't it a fact that that TBA inventory was almost one hundred percent Goodyear?

A. Yes, it is.

Q. And isn't it a fact you got a bonus on that Goodyear

TBA inventory at the time on his purchase of Goodyear TBA?

A. No.

Q. Was there no promotable dealer bonus at that time?

A. No.

Q. When did that bonus begin to go into effect?

A. I believe it was January of 1957.

Q. And he was in the station until sometime in 1957, you will recall. To refresh your recollection, Mr. Matthews testified that he was an Atlantic lessee dealer until May 7, 1957. So, from January 1957 to May 1957 you were getting a bonus or you were getting an incentive award, you were under an incentive award program based on Goodyear TBA; is that right?

A. Well, I wouldn't want to say that was right without looking at my records. I am not sure.

Q. If my dates are correct, that would be so.

A. Except that I am not sure when the bonus plan started. I believe it was January 1957.

Q. And it was to your advantage when the bonus plan started to increase the purchases of TBA by Atlantic dealers because it inured to your financial benefit, 3520 did, it not?

A. Yes.

Q. You stated you had a conversation with Mr. Matthews concerning his purchase of ten Auto-lite batteries. Do you recall that testimony?

A. Yes.

Q. Why was it necessary for you to comment about Auto-lite batteries to Mr. Matthews?

A. Well, Mr. Matthews had been purchasing Goodyear batteries up until that time. I went into his station one day and observed Auto-lite batteries in his office. I think it was natural that I ask him why had he discon-

tinued buying our Goodyear batteries, and decided to buy Auto-lites.

Q. Was that—do you recall the conversation you had with him. Would you state it?

A. Yes, I asked him why he had chosen to purchase Auto-lite batteries, and asked if there was something wrong with our batteries and asked him why he chose to buy the Auto-lites. The explanation he gave me was that an automotive jobber with whom he had been doing business owed him some money. He had a credit on their books. They asked him if he would take these batteries in lieu of a refund in cash, and he agreed to do so.

Q. Otherwise, he was purchasing Goodyear batteries exclusively, is that correct?

3521 A. Well, no, I wouldn't say that.

Q. He was stocking Goodyear batteries, shall we say?

A. Yes.

Mr. Kelaher: No further questions.

*Redirect Examination by Mr. Francis Ballard.*

Q: Mr. Hayes, going back to your early experience with Atlantic, when you were hired did you attend a dealer training school?

A. Yes, I did.

Q. For how long?

A. It was ten weeks.

Q. And I believe you also stated to Mr. Kelaher that you were a retail instructor thereafter?

A. That is right.

Q. Is that retail instructor's position the same as a service salesman is today?

A. Yes, it is.

Q. Now, on Mr. Matthews, Mr. Kelaher asked you a

question which indicated that Mr. Matthews left his station in 1957. Were you Mr. Matthews' salesman at that time?

A. No, I wasn't.

Q. Were you Mr. Matthews' salesman at any time in 1957?

A. I don't believe so.

Q. Now, as to Mr. Matthews' inventory, in your 3522 experience would it be easy to find a replacement for a dealer who has an inventory of \$12,000 to \$13,000?

Mr. Kelaher: Objection, unless the question is limited to TBA.

Hearing Examiner Kolb: The objection is overruled.

The Witness: I would say Yes, it would be.

By Mr. Francis Ballard:

Q. It would be easy or difficult?

A. It would be difficult.

Mr. Francis Ballard: That is all.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all.

(Witness excused.)

Mr. Kelaher: May we have a short recess.

Hearing Examiner Kolb: All right.

(A short recess was taken.)

3523 Hearing Examiner Kolb: The hearing will come to order.

ALBERT J. VAYDA, was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

*Direct Examination.*

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Albert J. Vayda.

By Mr. Francis Ballard:

Q. Mr. Vayda, who do you work for now?

A. Ford Division of the Ford Motor Company, sir.

Q. What is your position with them?

A. I am the fleet sales manager for the Philadelphia district.

Q. You were at one time employed by Atlantic?

A. Yes, sir.

Q. When did you go with the Atlantic Company?

A. I believe I started with Atlantic Refining Company in May 1946.

Q. Were you at any time a dealer salesman with Atlantic Refining?

A. Yes, sir.

3524 Q. Can you recall the period of time, approximately?

A. To the best of my recollection it was 1948 through around August of 1952.

Q. Was it in August of '52 you left Atlantic to go with Ford?

A. Yes, sir.

Q. During that period when you were a salesman for Atlantic Refining, did you have as one of your dealers a man named Pollock?

A. Yes, sir.

Q. Do you recall how long you were Pollock's salesman?

A. Approximately four years.

Q. Did you develop any personal relationship with Pollock at all over that time?

A. Oh, yes, sir, I visited his home and he had been to my home.

Q. Mr. Vayda, Mr. Pollock testified in these proceedings about a year and a half ago and I would like to read you some of his testimony and ask you a few questions about it. I am reading now from the record at page 690, starting at line 14. He asked this series of questions and gave these answers:

"Did you purchase any brands of batteries other than Goodyear brand after March 1951?"

"Answer: Yes, Bowers batteries."

3525 "Question: Was anything ever said to you by an Atlantic representative in respect to your purchases of Bowers batteries?"

"Answer: Yes, I had a large sign outside with batteries on display and they asked me to take them in, to remove them."

"Question: Was the large sign, did the large sign advertise Bowers batteries?"

"Answer: That is right."

"Question: Can you fix the approximate time when this occurred?"

"Answer: It was approximately, I would say the spring of 1952."

"Question: Do you recall the name of the Atlantic representative who made the statement to you?"

"Answer: Mr. Vayda."

"Question: Did Mr. Vayda ever make any other comments to you with respect to the purchase of Goodyear TBA by you?"

"Answer: In what respect?

"Question: Did he ever threaten you with cancellation?

"Answer: Well, with this battery deal through the heat of the argument I told him to get off the premises and he told me he was going to have the lease cancelled and 3526 that is the way it remained."

Now, Mr. Vayda, do you recall whether or not Mr. Pollock purchased Bowers batteries?

A. I remember that he had purchased Bowers batteries.

Q. Did you see them at his station?

A. Yes, I did.

Q. Where were they displayed?

A. Right in the office, in a prominent position.

Q. Do you know or remember whether or not Mr. Pollock had a large outdoor Bowers sign?

A. A large outdoor—

Q. Bowers sign, yes.

A. You know, a lot of gasoline has gone through the pumps since then. Vaguely, I would say Yes, I remember the sign.

Q. Now I ask you this question: Did you have an argument with Mr. Pollock concerning either Bowers batteries, or the sign, in the course of which argument you told him you were going to have his lease cancelled?

A. Again, to the best of my recollection, I vaguely remember it, but I honestly don't remember getting into any serious argument over it.

Q. Do you remember making a threat to cancel his lease?

A. I can't remember, honestly. I don't remember telling him that I would cancel his lease.

Q. Did you, have you ever threatened to cancel 3527 any dealer's lease in your experience with Atlantic?

A. No, sir.

Mr. Francis Ballard: Cross-examination.

Mr. Kelaher: No questions.

Hearing Examiner Kolb: Thank you very much.

(Witness excused.)

ROBERT KLEIN was called as a witness on behalf of the respondent The Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

*Direct Examination.*

Hearing Examiner Kolb: Give the reporter your name and address?

The Witness: Robert Klein, 611 Jackson Avenue, Woodcrest, Wilmington 4, Delaware.

By Mr. Ballard:

Q. Mr. Klein, you are an employee of Atlantic Refining, are you?

A. Yes, I am.

Q. What is your present position with Atlantic?

A. Promotable dealer salesman.

Q. What district?

A. Wilmington, Delaware.

Q. Mr. Klein, when did you become promotable 3528 dealer salesman in the Wilmington district?

A. March 1956.

Q. At that time did you become a salesman or was one of the dealers on whom you called, a gentleman named Richard Brown?

A. Yes, it was.

Q. Now at that time had the extra compensation plan for promotable dealer salesmen just gone into effect?

A. It went into effect the first of April 1956.

Mr. Ballard: Off the record?

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Fred Ballard: It is stipulated that the extracom-pensation plan for promotable dealer salesmen became effective April 1, 1956.

The Witness: That is in the eastern Pennsylvania region. It may have been different for other regions.

Mr. Fred Ballard: I think it was in all regions at the same time.

By Mr. Fred Ballard:

Q. Do you recall a discussion between yourself and Mr. Brown with respect to that extra compensation plan?

A. Yes, at some time after the first of April, Mr. Brown asked me, nonchalantly one day if I was paid a commission on products I sold. I said Yes, and he said, 3529 "Does that include TBA?" and I said "It certainly does."

Q. Is that the extent of your conversation with him?

A. Yes.

Q. At that time was Mr. Brown buying Firestone TBA?

A. Yes, to a certain extent.

Q. Now moving to December of 1956, do you recall an incident involving Mr. Brown and a recap Goodrich tire sold on an Atlantic credit card?

A. Yes, I do.

Q. Would you describe that incident for us, please?

A. Certainly. The tire was sold to a credit card customer by the name of Mr. White. I don't know his first name. The tire was evidently defective, something was wrong with it and the customer brought it back about a month or two late and wanted an adjustment. He mentioned to Atlantic it was sold by the way on terms on the

credit card. I think he had made one or maybe two payments on the tire. He wrote us and told us he would refuse to pay for the remainder of the tire unless an adjustment was made.

Well, I went out and talked it over with Mr. Brown and he informed me that it was a Goodrich tire. I said it was perfectly legitimate for him to put a Goodrich tire on an Atlantic credit card, however, I felt in that case he, or Goodrich, should certainly back up the sale in case of an adjustment or something of that order.

3530 Q. Now, sir, Mr. Brown left his station at what date, do you recall?

A. He left his station on the 5th day of April 1957.

Q. When did he first tell you that he wanted to leave his station?

A. He told me on numerous occasions, I would say from the first of July 1956, at intervals of about six weeks; at one time he would say he wanted to leave and then he didn't want to leave and then he wanted to leave again and it went back and forth, and finally about the 5th of March he told me that he definitely was going to leave this time. And I said I will go to work and try to find a replacement for you.

Q. Did you go to work and find a replacement for him?

A. Yes, I did. I had been working with a Gulf dealer, trying to get him to take the station and he was debating whether he wanted to take it or not. However, I also had a man in the dealer training school who would graduate in time to get into Brown's station by the 5th of April, thirty days later. In the end I put the man from our dealer training school into the station, on the 5th of April.

Q. Was his name Bruton?

A. Johnny Bruton.

Q. Now when Mr. Bruton took over the station from

Mr. Brown, did Mr. Bruton buy Mr. Brown's TBA inventory?

A. Yes, he did.

3531 Q. Did that include some non-Firestone items?

A. Quite a bit of them.

Q. Did he also buy Mr. Brown's equipment?

A. He bought all of Mr. Brown's equipment except a battery charger. The reason he wouldn't buy the battery charger, was because he felt the price was exorbitant and he could get a comparable charger for a considerably lesser price.

Mr. Fred Ballard: No further questions.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: We will take a short recess.

(A short recess was taken.)

3532 Hearing Examiner Kolb: The hearing will be in order.

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Klein, was your first association with Atlantic as a promotable dealer salesman March 1956?

A. No.

Q. When did you begin with Atlantic?

A. I began with Atlantic in October 1951.

Q. What was your—would you just state what your jobs and experience has been with Atlantic?

A. I started as an employee in a company-operated station in 1951 and in 1953, and to July of 1954 I worked as a tax accountant in both Philadelphia and the Reading offices, and in July 1954 I attended the dealer training school in Allentown, Pennsylvania, after which I became a service salesman. I worked as a service salesman in Seaford, Delaware, until March 1956.

Q. At that time you assumed the present job?

A. Yes, sir.

Q. In the Wilmington district. Has your supervisor in the Wilmington district been Mr. Jones during your employment there?

A. Not entirely.

Q. Who was your supervisor?

A. Mr. J. M. Connally had been supervisor prior 3533 to Mr. Jones.

Q. I believe you were present at these hearings two days ago when Mr. Jones testified, were you not?

A. Yes, I was.

Q. He referred to Mr. Robert Klein as having been the top Firestone TBA salesman in the Wilmington district during either 1956 or '57. He wasn't certain. You are that Mr. Klein, are you not?

A. Yes.

Q. What year was he referring to?

A. 1956.

Q. And are you still consistently one of the top Firestone TBA salesmen in the Wilmington district?

A. Yes, I would say so.

Q. And you receive a bonus, do you not, on the purchase of Firestone TBA by Atlantic dealers?

A. I work on an extra compensation plan and incentive program, yes.

Q. Yes. And have you consistently received a bonus under that plan, due to sales of Firestone TBA?

A. No, sir.

Q. 1956 you did?

A. Yes, and 1957 I didn't. 1958, up to this point, I haven't.

Q. How long have you been aware of the Federal 3534 Trade Commission investigation into the Firestone-Atlantic sales commission plan?

A. Since March 1956 when I became a salesman.

Q. You learned of it when you went to the Wilmington district, is that right?

A. Yes. I could elaborate on that a little bit. I knew of Federal Trade Commission activities, the investigator being in Wilmington in March '56. However, I knew prior to that time that an investigation had been going on.

Q. You knew prior to the time you went to the Wilmington district that such an investigation was underway?

A. Oh, yes, sir.

Q. You are always attempting to increase Atlantic dealers' purchases of Firestone TBA, are you not?

A. Yes, sir.

Q. Isn't it true that you, on your trips to stations, Atlantic dealer stations, you can spot non-Firestone TBA; isn't that true, with respect to tires and batteries and—

A. (Interposing.) Oh, yes, certainly, but accessories I can't.

Q. You can't where they are brands carried in the Firestone TBA line; is that what you mean?

A. Yes, sir.

Q. Were you implying in your direct examination that you never at any time made any comments to Mr. 3535 Brown concerning non-sponsored TBA?

A. I was.

Q. You never at any time during your calls on Mr. Brown, made any comment to him concerning the fact that a particular product was not in the Firestone TBA line?

A. The only comment I ever made to Mr. Brown regarding TBA was that I asked him to get TBA other than Firestone if he couldn't make the purchases from Firestone.

Q. However, if he could make the purchases from Firestone, he was to make them there, is that what you mean?

A. No, sir. He objected to me that Firestone didn't want to sell to him on several occasions because of his very poor credit record, and the fact that they run a truck across town with maybe three fanbelts and when the truck got there, he would throw up his arms about everytime and say he wanted it on credit or didn't have the money, and on one occasion he gave them 530- some pennies to pay for it.

Q. Isn't it a fact he was dissatisfied with the Firestone service store delivery, and with their service, and with their prices? Did he tell you about that?

A. May I take those items one at a time, please?

Q. I am asking you if—you may—but I want you to answer the question Yes or No first.

A. Yes, he was.

Q. Now, as to each item, if you like.

A. He was dissatisfied with their service because 3536 they became a little antagonized with Mr. Brown and for what I felt was very good reason. The item I just referred to a moment ago, running a truck from one end of Wilmington to the other with one or two items, maybe totaling—maybe three or four oil filter cartridges and when the truck got there he knew he couldn't buy from them on credit, and he would insist that the truck driver give it to him on credit.

One time the driver told him you are either going to pay me money or I won't leave them. Those are my instructions from the store manager.

Q. Were you present during these conversations, at that particular one?

A. Yes, sir, and others.

Q. Isn't it true that he complained about the fact that the Firestone service store was underselling him?

A. I think he did, on one occasion, in my presence, yes.

Q. And that was a fact, wasn't it?

A. No, it wasn't.

Q. Isn't it true that the Firestone service store at times sells Firestone tires at a lower price than Atlantic dealers can afford to sell them?

A. No, sir.

Q. You were aware, in any event, of a friction between Brown and the Firestone service store?

A. Indeed I was.

3537 Q. Now, with respect to credit card adjustments, does Atlantic handle the credit card adjustments on Firestone tires?

A. No, sir, not directly. I, as a sales representative, oftentimes discuss it with the Firestone store manager, or the Firestone representative, for a dealer or with a dealer. But we don't make the adjustments.

Q. If the sale of Firestone tires is made on Atlantic credit cards by an Atlantic dealer, don't you repay, don't you, under your credit card set-up, immediately or shortly thereafter, repay the Atlantic dealer?

A. Yes.

Q. For that sale?

A. Yes, sir.

Q. And that is the end of his association with the matter, isn't it?

A. Yes. Insofar as Atlantic is concerned.

Mr. Kelaher: No further questions.

Mr. Fred Ballard: I have no further questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

3538 WILLIAM L. WAY was called as a witness on behalf of Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: William L. Way; 110 Brookside Road, Newton Square, Pennsylvania.

*Direct Examination by Mr. Francis Ballard.*

Q. You are presently an Atlantic lessee, is that correct?

A. Yes, sir.

Q. Could you tell us where your station is?

A. State Road and township line, Drexel Hill.

Q. When did you move into that station?

A. December, 1953.

Q. What had been your work before that time?

A. I was a salesman for Atlantic Refining Company.

Q. In the Philadelphia area?

A. Yes, sir.

Q. When did you start with Atlantic?

A. In December of 1946.

Q. When did you become a salesman for Atlantic?

A. A dealer salesman?

3539 Q. Yes.

A. In 1948 or 1949.

Q. And then you were a dealer salesman until 1953 when you left?

A. Yes.

Q. While you were a salesman, did you have a dealer named James Matthews?

A. I did.

Q. And you were his salesman?

A. Yes, sir.

Q. Do you remember how long, for how long a period of time he was one of the dealers you called on?

A. Approximately ten months, eleven months.

Q. Can you tell us what year that would have been?

A. 1953.

Q. Where was his station at that time?

A. In Yeadon.

Q. Would you tell us now, Mr. Way, something about Mr. Matthews' operations at that station when you first came to his territory in early 1953?

A. Yes. When I took over in that particular territory, Jim Matthews was having some kind of difficulty in operating his business. He was at that time operating two businesses, one a trucking concern and also a service station.

His figures were not good, and it was my opinion 3540 that Matthews should stick with one of the two businesses, that he was doing no good to either one of the businesses.

Q. What was the nature of the trucking business you mentioned?

A. He had several tractors, no trailers. He had contracts with several concerns, and he hauled these trailers to different parts of the country.

Q. Now, you stated what you—that it was your opinion that he ought to either go into the trucking business entirely or the service station business; is that right?

A. Yes, sir.

Q. Did you ever mention that to Mr. Matthews?

A. I did.

Q. Could you tell us about that conversation?

A. Yes, I mentioned the fact that he should pick one of the two; if he wanted to stay in the service station business, I felt that if he wanted to do justice to it, that he should give up the trucking business or vice versa. And

he more or less agreed that he had had trouble just prior to that. I believe one of his trucks was in a rather serious accident down South with a possible suit pending as a result of the accident, and he had trouble on different occasions with drivers not showing up, and just apparently wasn't working out too satisfactorily.

Q. In the course of this conversation, did you suggest the possibility of a mutual cancellation of his Atlantic lease?

A. At that time?

Q. Yes.

A. Yes.

Q. Or shortly thereafter?

A. Yes.

Q. What was—

Mr. Kelaher (Interposing): Which is the answer now?

By Mr. Francis Ballard:

Q. Was it at the time of the conversation that you have just told us about, or was it later on you mentioned a mutual cancellation deal?

A. I think it was a little bit later.

Q. Did Mr. Matthews sign the mutual cancellation?

A. No, he did not.

Q. What was the nature of your conversation with him at that time?

A. Well, we discussed this for probably an hour or so, and we hashed it back and forth, and I told him I felt he could do better in the service station if he devoted a hundred percent of his time to the station. I also submitted a mutual to him, told him he didn't have to sign it, it wasn't mandatory, and I felt that if he could devote one hundred percent of his time to the station, that he could develop the location, which would also increase his net profit.

Q. And he stayed on in the station?

A. Yes, he did.

3543 Q. What were the results of his operations after that conversation?

A. Well, due to a hundred percent attendance at the station, his over-all picture improved, the station appearance picked up. Well, the proof is that he was selected for another location, a better location, several months later.

Q. I think you said that he was devoting a hundred percent of his time to the station?

A. Yes.

Q. What happened to the trucking business?

A. He divorced himself completely from the trucking business.

Q. Did you also, while you were a salesman with Atlantic, a dealer salesman, have a dealer named James M. Meyers, Jr.?

A. I did.

Q. Do you recall how long a period of time he was a dealer you called on?

A. Approximately two years, I guess. I am not sure about that.

Q. Mr. Meyers testified in these proceedings in June 1957. At page 1,112 he was asked whether or not he received a letter from Atlantic Refining Company which said he had freedom of choice as to his TBA purchases. His answer was:

"Yes, I did receive a letter later than that, stating that I had freedom of choice."

"Question: Did you ever discuss that letter with 3544 Salesman Way?"

"Answer: Yes, I did."

"Question: What did you state to Salesman Way?"

"Answer: I said 'Bill, does that letter mean what it says?' and he said 'You try it and you will find out.' That was the answer I received."

Now do you recall the letter which is mentioned?

A. I recall the letter, yes.

Q. Do you recall by whom it was signed?

A. Mr. Colley.

Q. Did you have conversations with your dealers about that letter generally?

A. Yes, as we discussed many pieces of correspondence coming from the office.

Q. Did you have any conversation with Mr. Meyers of the nature that he testified about?

A. I believe the subject came up, yes.

Q. Did you ever tell him: "Try it and you will find out"?

A. No, sir.

Q. Did you ever tell either Mr. Meyers or any other dealer that the policy of the company was other than as stated in the letter?

A. No, sir.

Mr. Francis Ballard: Cross-examine.

3545      *Cross-Examination by Mr. Kelaher.*

Q. Mr. Way, you were still an Atlantic lessee dealer at Drexel Hill, is that correct?

A. Yes, sir.

Q. And you have been in that station since December 1953?

A. Yes, sir.

Q. So you have been with Atlantic from December 1946, until the present time?

A. December 1945.

Q. You gave one date in your direct testimony concern-

ing December 1946, as I recall. What did you start with Atlantic as?

A. I started as a service salesman.

Q. That was in December 1945?

A. Yes, sir.

Q. When did you become a dealer salesman—were you a service salesman until you became a dealer salesman?

A. No, I was a commercial salesman, calling on fleet accounts.

Q. In any event you became a dealer salesman in 1948 or 1949?

A. Yes, sir.

Q. I want to ask you a question or two about Mr. Meyers. Do you recall the time when Mr. Meyers' 3546 station was used as a model station?

A. Yes, sir; I do.

Q. Do you recall the time when that happened?

A. No, I don't.

Q. Was that before or after the change-over to Goodyear TBA line?

A. Honestly, I don't know; I don't remember. I would say the model station program was probably around 1950 or '51.

Q. And the change-over to Goodyear TBA was in March 1951, if you recall?

A. Yes; I am not sure.

Q. It could have been after March 1951?

A. It could have been. I don't remember.

Mr. Kelaher: No further questions.

Hearing Examiner Kolb: That is all, Mr. Way. Thank you.

(Witness excused.)

Mr. Fred Ballard: Sir, I have another witness who will take about, oh, half or three-quarters of an hour. I would

be glad to put him on now or after lunch, whichever you prefer.

Hearing Examiner Kolb: Let's put him on now.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3547 Hearing Examiner Kolb: On the record.

We will adjourn at this time until 1:30.

(Thereupon, at 11:57 a.m., the hearing was recessed, to reconvene at 1:30 p.m., this same date.)

3548 Afternoon Session. (1:30 p.m.)

Hearing Examiner Kolb: The hearing will come to order.

JOSEPH M. CONNELLY was called as a witness on behalf of the Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

*Direct Examination.*

Hearing Examiner Kolb: Give the reporter your name and address.

The Witness: Joseph M. Connelly, 2512 Prospect Street, Pennside, Reading, Pennsylvania.

By Mr. Fred Ballard:

Q. Mr. Connelly, you are an employee of Atlantic Refining Company?

A. Yes, I am.

Q. Will you tell the Examiner when you first joined that company?

A. May I refer to a note I have on my history with the company?

Q. Is that a list of your jobs?

A. Yes, of my jobs and when I was hired, from my personnel record.

3549 Mr. Kelaher: All right.

The Witness: I was hired as a retail merchandiser in February, 1946. I was made a retail instructor in April 1946, a commercial salesman in December 1946, and I held that job until October 1950. I was a dealer salesman from October 1950, until July 1952. I then became a promotable dealer salesman.

In February 1954 I became a site representative. I again was a promotable dealer salesman from February 1955 to August 1955. I then became a sales supervisor in Wilmington and I stayed in that job until November 1956. I then became contract dealer accounts coordinator in the eastern Pennsylvania region and I held that job until September of this year, when I became direct marketing manager.

By Mr. Fred Ballard:

Q. Now Mr. Connelly, do I understand correctly that until you became sales supervisor in the Wilmington district in August 1955, previous to that time all your service had been in the Philadelphia suburban district of Atlantic?

A. Yes, it had.

Q. You mentioned that you were a site representative. What is the duty of a site representative?

A. It is a, well, liaison job between sales and our real estate department in the selection of service station properties.

3550 Q. Did you yourself make the decision as to whether a particular property should be purchased for a service station?

A. No, sir, I didn't, that decision was actually made by several people.

Q. About how many?

A. Oh, I would say possibly eight or nine. Very briefly, I would recommend or investigate a piece of property and it would then go to the district manager, who would take it to what we called then a DLC, a sort of real estate manager for a region and then the regional manager, if it was approved at that point, then it would go to top company management for their inspection and approval.

Q. You also said you were contract dealer coordinator in the eastern Pennsylvania region?

A. Yes, sir.

Q. What was the nature of your duties there?

A. Well, it is a specialist for a class of trade, working in conjunction with everything concerning contract dealer business.

Q. About how many contract dealers were in that region?

A. I would say approximately 950 or a thousand.

Q. What proportion of them operated service stations with full station facilities?

A. I would say in the neighborhood of 550 to 600.

3551 Q. Does that region include Zieglererville, Pennsylvania?

A. Yes, sir; it does.

Q. Did you have any personal contacts with Francis Ballaron as a contract dealer in Zieglererville?

A. I did not.

Q. Have you at my request ascertained whether Mr. Ballaron is still a contract dealer there?

A. I have ascertained that.

Q. Is he?

A. He is not.

Q. According to Atlantic's records, why is he no longer a contract dealer there?

Mr. Kelaher: Objection your Honor.

Mr. Fred Ballard: You Honor, I didn't bring Mr. Ballaron into this thing as to his present whereabouts. Mr. Kelaher brought it in this morning and left a clear impression with your Honor that Mr. Ballaron is a fine, successful Atlantic contract dealer in Zieglererville today, I am entitled to explain that, I think, sir.

Mr. Kelaher: I think you are entitled to explain it, but not in this manner.

Hearing Examiner: I think the record would be the best evidence of that.

Mr. Fred Ballard: May I ask a few more questions?

Mr. Kelaher: I object to any further questions.

3552 Mr. Fred Ballard: I don't see how you can object to a question until it has been asked.

Mr. Kelaher: All right, go ahead and ask them.

By Mr. Fred Ballard:

3553 By Mr. Fred Ballard:

Q. Now, Mr. Connelly, when you were a promotable dealer salesman, and I believe the period was July 1952 through February 1954, what area did you cover?

A. I covered from Darby, south through the Chester area, and the majority of my stations were on the McDade Boulevard-Chester Pike route.

Q. Is that area what is called in the trade a price war areas?

A. Yes, sir; it is.

Q. Is the area affected by those price wars localized or does it include the entire Philadelphia suburban district?

A. It was certainly localized during the time I was there.

Q. I believe you were present at the hearings in June and July of 1957, and do you recall a number of ex-Atlantic dealers testifying in those hearings?

A. Yes, sir; I do.

Q. Do you remember which of those were in the area affected by these price wars?

A. I believe so. Jack Pollock, John Chambers, and Iacono, George Hill, Elmer Booz.

Q. Now, sir, what was Atlantic's practice when 3554 price wars would strike an area?

A. Before we gave support to the dealer we had to make certain that support was given by other companies, which meant that we had to examine through a competitive dealer's cooperation, a tank wagon ticket or on occasion would have our dealers go to a competitive dealer with us, that they knew, to get information as to what type of support he was getting.

After getting that information we had to relay it to our supervisor who in turn took it to his district manager who then petitioned the regional manager for some sort of equal support.

Q. As a result of that Atlantic was sometimes slower to reduce its price to dealers than other companies?

A. Yes, sir.

Q. Did the Atlantic dealers occasionally resent this practice?

A. Yes, sir.

Q. Now, I believe you have heard the testimony of various witnesses in this case regarding the difficulties experienced in locating qualified dealers and dealer candidates. Have you heard such testimony?

A. Would you mind repeating that?

(Question read.)

The Witness: Yes, sir, I have.

3555 By Mr. Fred Ballard:

Q. During your tour of duty in the Philadelphia suburban district, and the Wilmington district and eastern Pennsylvania region, has Atlantic experienced similar difficulties in those areas?

A. Yes, sir; they have.

If I may, that is the biggest difficulty we have, is finding good qualified prospects for service stations.

Q. Now, approximately how many retail petroleum outlets are there in the Philadelphia suburban district?

A. All companies, sir?

Q. Yes, sir.

A. Approximately 2600.

Q. Would you know what percentage of those had full service station facilities?

A. I believe about 2,000 of them have full facilities.

Mr. Kelaher: Is this answer, does this answer—let me ask it this way. What type of dealer are you referring to?

Mr. Fred Ballard: I asked him the number—would you read the question, please?

Mr. Kelaher: Strike that. Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3556 Hearing Examiner Kolb: On the record.

By Mr. Fred Ballard:

Q. Now, Mr. Connelly, when you first became a salesman for Atlantic, Atlantic was selling Lee tires and Exide batteries to its dealers?

A. Yes, sir.

Q. And some accessories?

A. Yes, sir.

Q. And then, in March, 1951 Atlantic sponsored, or began to sponsor the Goodyear line in the Philadelphia suburban district; is that correct?

A. That is correct.

Q. Did you find the Goodyear brand easier to sell than the Lee and Exide brands?

A. Yes, I did.

Q. Did you find that your dealers welcomed the change?

Mr. Kelaher: I am going to object to this type of generalization.

Mr. Fred Ballard: I withdraw the question.

By Mr. Fred Ballard:

Q. What was the reaction of your dealers to the change?

A. The majority of my dealers liked the change.

Q. Now, Mr. Connelly, as you understand Atlantic's TBA policy, if a dealer can make more profit for himself handling some TBA other than the Atlantic recommended brand, what is Atlantic's attitude?

A. That he should certainly take advantage of the extra profits.

Q. Do you know any—can you give an example of where that might apply?

A. Well, I am not thinking of a particularly profitable angle, but for example, in Wilmington, and I am thinking of an acceptance standpoint here, where his volume is greater because of it—Wilmington is the home of the DuPont Company, as you are probably aware, and most all the Wilmington dealers handle, for example, Zerone and Zerex, DuPont products, because DuPont employees wish to buy them and in my opinion it would be foolish not to.

Q. Throughout the various areas where you have worked, the Philadelphia sub-district, Wilmington district, and Eastern Pennsylvania region, do the supply points for Goodyear or Firestone, depending on which is sponsored, encounter competition from other TBA suppliers in selling to Atlantic dealers?

A. Yes, they do.

Q. Does the success of the supply point in making sales to Atlantic dealers vary from one supply point to another?

A. Yes, sir.

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Objection overruled.

3558 By Mr. Fred Ballard:

Q: Did you answer?

A: It certainly does.

Q: What in your observation are the factors that influence the degree of success of the supply point?

Mr. Kelaher: Your Honor, he is testifying now, as I understand it, as to supply point in various regions which includes Eastern Pennsylvania region, Philadelphia sub-district, Wilmington district, and he is going into reasons as to why a supply point will sell more sponsored brand than another. It seems to me that is a form of hearsay which is objectionable.

Mr. Fred Ballard: Your Honor, this man has served as the sales representative for these various supply points. Atlantic sponsors their products. He observes everyday how successful these points are. If he doesn't know if one is more successful than another and what makes that success, I don't know who does.

Mr. Kelaher: I might add, your Honor, that he would have to have access to the books and records of all the supply points and in all the areas he is testifying to and it seems to me this is strictly hearsay type of testimony he is talking about.

Hearing Examiner Kolb: Well, he would know what was being sold in his territory, where he is located.

3559 Mr. Kelaher: He is talking about the success of various supply points, as I understand it.

Mr. Fred Ballard: That is correct. He has seen a great many.

Mr. Kelaher: I say it is hearsay. I object.

Hearing Examiner Kolb: I overrule the objection.

Mr. Fred Ballard: Will you read the question?

(The reporter read the question as follows: "What in your observation are the factors that influence the degree of success of the supply point?" )

Hearing Examiner Kolb: You are speaking of selling to Atlantic dealers?

Mr. Fred Ballard: Yes, sir.

The Witness: I think first and foremost would be delivery and service. Credit terms, proximity of the supply point to the Atlantic stations in that area, credit terms, the amount of stock, how well stocked the supply point is, whether it is completely and well stocked enough to take care of all their needs promptly. Those are some of the major factors.

By Mr. Fred Ballard:

Q. On that basis, which of the various areas you have worked in has the most outstanding supply points?

A. Philadelphia.

Mr. Kelaher: I beg your pardon; your Honor, before he answers, I object to that question unless it is stated 3560 with more specificity.

Mr. Fred Ballard: Your Honor, if Mr. Kelaher wants to be more specific, he has cross-examination.

Hearing Examiner Kolb: I overrule the objection.

By Mr. Fred Ballard:

Q. By your answer, you mean the Philadelphia suburban and region?

A. Yes, sir.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Fred Ballard:

Q. Now, Mr. Connelly, in your experience covering these various regions, districts and regions, does Atlantic comment in its investigation reports on dealers as to the brands of TBA they handle?

A. It most emphatically does not.

Q. Does it prevent the sale of non-sponsored TBA on credit cards?

A. It does not, sir.

Q. Does it penalize its dealers in any way for handling non-sponsored TBA?

A. It does not.

Q. Are such dealers equally eligible for station improvements?

A. They certainly are.

3561 Q. For other benefits of the Atlantic dealer program?

A. Yes, they are.

Q. When you were in the Philadelphia suburb and district, was John Chambers one of your dealers?

A. Yes, he was.

Q. Did he at one time request a promotion to a—from his station at 2d and Lloyd Streets to a new and different station in Sharon Hill?

A. Yes.

Q. What was your recommendation on that?

A. My recommendation was that we give John Chambers the Sharon Hill station he wanted.

Q. What was your supervisor's recommendation?

A. Mr. Arnholt was my supervisor at that time. He felt that John Chambers' record, as far as appearance goes, of his station in Chester, did not qualify for the Sharon Hill station.

Q. Was Chambers finally given the Sharon Hill station?

A. Yes, sir.

Q. Did he know that Mr. Arnholt opposed his being given that station?

A. Yes, he did. I had a very—

Mr. Kelaher: (Interposing.) Just a minute. Your Honor—

Mr. Fred Ballard: (Interposing.) I withdraw the  
3562 question, Mr. Kelaher.

By Mr. Fred Ballard:

Q. Did you tell Mr. Chambers that Mr. Arnholt opposed his taking the new station?

A. Yes, I did. In fairness to John Chambers and myself—

Mr. Kelaher: (Interposing.) Objection. I think he just asked what he told Mr. Chambers.

By Mr. Fred Ballard:

Q. Would you tell us what you told Mr. Chambers?

A. I told Mr. Chambers Mr. Arnholt felt the transfer should be made, because Mr. Chambers had kept a location that was shabby, as far as appearance goes. I also told Mr. Chambers that through my insistence, Mr. Arnholt had granted him the station and that I had told Mr. Arnholt that Mr. Chambers would keep a clean, orderly station.

Q. On one occasion or another, did you ever talk to Mr. Chambers about a product known as Bars Leak?

A. Yes, I did.

Q. Would you tell us approximately—would you tell us to the best of your recollection the substance of the conversations you had with Mr. Chambers on that subject?

A. Yes, I will. Bars Leak, to describe the product, if I may—

Mr. Kelaher: (Interposing.) You may not. Just tell him—just report the conversation.

3563 By Mr. Fred Ballard:

Q. Mr. Connelly, are you familiar with the product Bars Leak?

A. Yes, I am.

Q. Will you describe it to us as far as you know about it?

Mr. Kelaher: Objection, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: It is a heavy, brownish-black liquid packaged in a glass container with a screw top, or was at that time.

By Mr. Fred Ballard:

Q. What did you say to Mr. Chambers about it?

A. I said I thought it had little resale value, that neither of us had any real knowledge of the quality of the product, that we had no idea as to how successfully it would do a sealing job in a radiator, and I thought he was very foolish when he was well stocked with DuPont sealer, which was packaged in a sealed container—and, of course, had public acceptance and had been well advertised—to stock both products, and I suggested to him that he was foolish to stock Bars-Leak.

Q. Did you have on occasion substantially the same conversation with Elmer Booz?

A. Frankly, I could have, very easily. But I can't tell you specifically that I did or did not. But it could 3564 very well have been exactly the same one.

Q. Were you in the hearing room when Mr. Chambers described an incident involving himself and Mr. Arnhold and a red hat?

A. Yes, I was.

Q. Did you observe that incident?

A. Yes.

Q. Would you tell us what happened?

A. Yes, sir. Mr. Arnhold was a firm believer in uniforms and uniformity, of both dealers and their employees. He was particularly concerned with hats and particularly didn't like red hats. He, jokingly, tried to remove Chambers' hat, and pretended he was going to throw it away, hoping John would laugh and say "All right." And John became offended.

Q. Now, sir, at my request, you tried to locate a dealer named Denny Denshaw, who was at one time the Atlantic dealer at Decatur and Frankfort Avenues, in Philadelphia?

A. Yes, sir.

Q. Were you able to ascertain his whereabouts?

A. No, sir, I wasn't.

Q. Now, I submitted to you a list of dealers, telling you that they were mentioned in the testimony here and the record did not clearly indicate whether they were contract dealers or lessee dealers. Did you at my request ascertain whether they were contract or lessee dealers?

A. Yes. They are contract dealers.

3565 Q. In all cases.

Mr. Fred Ballard: Mr. Kelaher, I suggest we ask the reporter to copy this list into the record, so that we will have the status of these dealers accurately.

Hearing Examiner Kolb: The reporter may copy the list in the record.

Mr. Kelaher: No objection.

(The list referred to above is as follows:)

3566 (The list referred to is as follows:

Dealers Mentioned in Philadelphia Testimony Whose Status Was Not Clearly Indicated

Name—Address

Clarence Nelson, 4th & Main, Darby, Pa.

Ed Stowe, Woodland & Primos, Folcroft, Pa.

Green's Atlantic, 214 E. 5th Street, Chester, Pa.

Mahlon Craig, Rising Sun & Lardner, Phila., Pa.

Minka Brothers, 6th & Morton Avenue, Chester, Pa.

J. S. Patchell, Morton Avenue, Morton, Pa.

Sharon Hill Garage, Hook Road & Chester Pike, Sharon Hill, Pa.

J. Gill, 2142 Darby Road, Oakmont, Pa.

Laughead Serv. Station, Chichester & Huddle, Chester, Pa.

Mr. Kelaher: May I have a minute before cross, your Honor?

Hearing Examiner Kolb: Yes, we will take a short recess.

(Whereupon, a short recess was taken.)

3567 Hearing Examiner Kolb: The hearing will come to order.

*Cross-Examination by Mr. Kelaher.*

Q. You became a dealer salesman in October 1950, is that correct?

A. May I refer to my notes again?

Q. Yes, go ahead. My question is whether or not you were a dealer salesman in the same area in which you later became a promotable dealer salesman?

A. No, sir, I was not.

Q. That wasn't clear from the questioning. Would you tell us where you were a dealer salesman beginning in October, 1950?

A. Yes, sir. From the Navy Yard, roughly, the most southern point in the central Philadelphia, north to approximately Gerard Avenue, on both sides of Broad Street as a boundary.

Q. In other words, in the City of Philadelphia?

A. Yes, sir, in the southeastern central Philadelphia, substantially.

Q. Then in July 1952 through February 1954 you became a promotable dealer salesman in Delaware County?

A. Right, sir.

Q. Does Atlantic sell antifreeze to its stations?

A. Yes, it does.

Q. Is that true in all regions?

A. It is true in the two I have had experience with.

3568 Q. As an Atlantic salesman, with respect to anti-

freeze, you would promote the sale of the antifreeze handled by Atlantic instead of other brands, isn't that true?

A. No, sir, that wouldn't be true.

Q. Let me ask you this: As an Atlantic salesman—what was the brand handled by Atlantic?

A. As I recall it when I was a salesman, it was Prestone and Super Pyro.

Q. You don't know of your own knowledge whether a commission is paid on purchases of antifreeze in the Firestone TBA line or Goodyear TBA line to Atlantic, do you?

A. No, sir, I don't.

Mr. Kelaher: No further questions.

Mr. Ballard: No questions.

Hearing Examiner Kolb: That is all. Thank you.

(Witness excused.)

Hearing Examiner Kolb: The hearing is adjourned, to reconvene at two o'clock, Monday November 17, Jury Room 3, Room 3066, U. S. Court House, Philadelphia, Pennsylvania.

\* \* \* \* \*  
3570 Hearing Examiner Kolb: The hearing will be in order.

O. HARRIS RHOADES, was called as a witness for the Respondent and, first having been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Ballard.*

Q. Would you give the reporter your full name and home address, please, Mr. Rhoades?

A. My name is O. Harris Rhoades; I live at 902 Nottingham Road, Jamesville, New York.

Q. And you are a lessee of an Atlantic station, I believe?

A. That is right.

Q. And what is the address of that station?

A. 309 Nottingham Road.

Q. Also Jamesville?

A. Dewitt.

Q. And how long have you been a lessee of that station?

A. Since November 1952.

Q. What kind of a station is that? Where is it located?

A. It is in the middle of a shopping center, Nottingham Shopping Center.

Q. Do you happen to know the term of your current rent lease, how long the lease goes for?

A. Three years.

Q. Now, before you took that station did you go to Atlantic dealer training school?

A. Yes, I did; I was one of the first dealers.

Q. When you got out of the school did your Atlantic salesman introduce you to the Goodyear supply point in your district?

A. I think so.

Q. Did you buy your initial stock of TBA from the Goodyear supply point?

A. I did, I bought my original stock.

Q. Did you continue to buy from the Goodyear supply point?

A. No, I shopped around more or less for my TBA. I had four or five different people used to call on me, and one of them was a very good friend of mine from Onondaga Supply.

Q. Do you buy from Onondaga Supply today?

A. Yes.

Q. What do you buy from them?

A. Oh, about half of my TBA, I would say; the major portion of it.

Q. Would that be tires, batteries or accessories?

A. I don't buy any tires from them. I buy mostly accessories.

Q. Most accessories?

A. That is right.

3572 Q. Where do you buy your batteries?

A. I buy my batteries from J. P. Byrnes. They handle Auto-Lite.

Q. Where do you buy your tires from?

A. From J. P. Byrnes who handles Firestone.

Q. Do you buy some Goodyear tires?

A. I buy some.

Q. What is your reason for buying Firestone tires?

A. I get better service from Firestone than I do Good-year.

Q. What about price?

A. I actually have a better buying price with Goodyear than I do Firestone, but it is just a service problem more or less; I can get tires from Firestone in 20 minutes and I sometimes have to wait two or three days from Good-year.

Q. Now, do you display your Firestone tires at your station?

A. Yes, I do. I have a pile of tires all the time in front of my station.

Q. And do you display your—those are Firestone tires?

A. Firestone tires.

Q. And I think you said that you bought Auto-Lite batteries?

A. That is right.

Q. And do you display those at your station?

A. Inside my show room, yes.

Q. And do you advertise your Firestone tires?

A. Yes, very much.

3573 Mr. Ballard: Would you mark this RA Exhibit No. 22 for identification?

(The document referred to was marked Respondent Atlantic's Exhibit No. 22 for identification.)

By Mr. Ballard:

Q. I show you a document marked RA 22 and ask you whether that is a copy of a mailing piece—or it is a mailing piece that you have sent out to your customers (handing documents to the witness).

A. Yes, it is.

Q. Is that typical of mailing pieces that you generally send out? Is that a typical mailing piece?

A. That is a typical mailing piece, yes.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Do you know approximately how many of these go out in a mailing, Mr. Rhoades?

A. About 6500.

Q. Now, in addition to these mailing pieces do you also advertise in any local newspapers?

A. Yes, sir, I do.

Mr. Ballard: Will you mark that Exhibit 23, 24 3574 and 25 for identification.

(The documents referred to were marked Respondent Atlantic's Exhibits 23, 24, and 25 for identification.)

3575 By Mr. Ballard:

Q. Now, Mr. Rhoades, I show you a paper marked R-A-23 and ask you if you will tell me what that is (handing document to the witness).

A. That is an ad I ran in my little local paper.

Q. What is the name of that paper?

A. That is The Shopping Time.

Q. And this one is marked R-A-24 (handing document to the witness). Can you tell me what that is?

A. That is an ad from the same paper.

Q. And finally R-A-25 appears to be the front page of the paper.

A. That is the same paper.

Q. With one of your advertisements in it?

A. Yes.

Hearing Examiner Kolb: Do those show the dates on which they were run?

Mr. Ballard: "25" shows the date—

By Mr. Ballard:

Q. Could you give us the approximate date on R-A-24?

A. That would be in November or December of 1956 that was in.

Q. And could you give us the approximate date?

A. That should be dated, election day special, November 6.

Q. 1956. That is R-A-23, sir.

3576 And are these typical of advertisements that you ran from time to time?

A. That is right.

Q. Does Mr. Byrnes—he is your Firestone supplier?

A. That is right.

Q. Does Mr. Byrnes help you in promotions in your Goodyear station?

A. He helped me with my Labor Day promotion tire sale.

Q. What did his help consist of?

A. He decorated my whole station with pennants, banners, tire stands, sent a man up to help me with the tire sale.

Mr. Kelaher: You mentioned Labor Day. Will you give us the year?

The Witness: Labor Day of this year, 1958.

By Mr. Ballard:

Q. Mr. Rhoades, have you ever participated in the National Brand Names Contest?

A. Yes, I have, for two years.

Q. And could you tell us a little bit of what that contest is about?

A. Well, the Brand Names Foundation has this contest every year for the promotion and sale of brand name items. About 1500 different companies belong to this Brand Names Foundation, and they run this contest every year for about

25 different categories, one of which is gasoline 3577 service stations. Your promotion and sale of brand names is taken into consideration, your community activities, any help you give schools or children is all taken into consideration for qualifying you for a finalist in this Brand Names Contest each year.

Q. How do you make your entry in that contest?

A. You save every bit of advertising and promotional material that you have had for a year and make a big portfolio or scrapbook which you send to the Brand Names Foundation in New York for judging.

Q. And in doing that did you include your Firestone advertisements and promotions?

A. Yes, I did.

Q. How did you make out, just as a matter of interest?

A. I was one of the finalists, there are about 15.

Q. Did anybody from Atlantic make any recognition of the fact that you were working in that contest?

A. Well, after it was all over with I had several phone calls from the Atlantic Refining people—Mr. Gilliam, Mr. Ostrander, who are district and regional manager; several

people, just clerks in the office called up because they know me and congratulated me.

Q. Mr. Ostrander also congratulated you. Was it Mr. Gilliam?

A. He is district manager.

Q. Will you spell that?

A. G-i-l-l-i-a-m.

3578 Q. Did he congratulate you?

A. That is right.

Q. Has Atlantic ever asked you to speak at dinners for new dealers?

A. Several times I have.

Q. Do you recall receiving a letter from Atlantic, dated 1955, with regard to Atlantic's no-forcing policy?

A. I can remember it, yes.

Q. Do you ever recall any discussions of that policy by Atlantic personnel?

A. At a meeting somewhere Mr. Ostrander—I don't remember where or what the meeting was about or anything else—but Mr. Ostrander was one of the speakers and he told us that if any time anybody from Atlantic ever pressured an Atlantic dealer into buying from one outlet or another, he wanted to know about it, that we were independent businessmen and were to be treated as such.

Q. And he was the regional manager, I think you said?

A. That is right.

Mr. Kelaher: Your Honor, I am going to move to strike unless some time or date is given.

Hearing Examiner Kolb: Can you give the date of this meeting?

The Witness: I can't. I can't remember what it was or what the situation was.

3579 By Mr. Ballard:

Q. Could you give us the approximate year?

A. It would be within the last three years, probably in '55.

Mr. Kelaher: I move to strike, your Honor.

Hearing Examiner Kolb: The motion to strike will be denied.

By Mr. Ballard:

Q. Mr. Rhoades, are there other oil companies active in and around your locality?

A. There are three other gasoline outlets.

Q. Have any of those companies ever asked you to take a lease from them?

A. Quite a few.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. What companies are they?

A. There is Socony and Gulf and Esso.

Q. Are those the companies that asked you to take a lease with them?

A. They have, yes, and other companies.

Mr. Ballard: I have no further questions.

Mr. Kelaher, representing the Federal Trade Commission, will probably have some.

3580 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Rhoades, did you say your station was located in DeWitt, New York?

A. That is right.

Q. Where is DeWitt located?

A. It is a suburb of Syracuse.

Q. How close is it to Syracuse?

A. Well, the city line runs up the middle of the road in front of my station.

Q. Right at the city line?

A. That is right. I actually get my mail at Syracuse.

Q. Are there other Atlantic stations in DeWitt?

A. Yes, there is one in the town. There may be more than that, but there is one right at the crossroads in DeWitt at the main artery.

Q. How about in Syracuse, are there other Atlantic stations in Syracuse?

A. That is right.

Q. Quite a number of them?

A. Quite a number.

Q. Does DeWitt come in Atlantic's southern tier district, do you know?

A. No.

Q. What district would it be in in Atlantic's division?

3581 A. I think it is called the central New York district; I am not sure.

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Kelaher:

Q. I understand that DeWitt is in the Syracuse district of Atlantic.

A. That is right.

Q. How many miles are you north of Binghamton, approximately?

A. I haven't any idea.

Q. About 80 or 90?

A. I would guess 80 or 90.

Q. Now, you became an Atlantic dealer in November '52, is that correct?

A. That is right.

Q. Had you been employed by Atlantic before that time?

A. No, only in dealer training school, that is all.

Q. You applied for a lessee station and then went to an Atlantic dealer training school before you were given your station?

A. That is right.

Q. Was the station you operated a new station?

A. That is right, I was the first dealer.

Q. You were the first dealer. And when you went 3582 in I suppose they had the Goodyear window valances up and the Goodyear outdoor sign?

A. Yes.

Q. And I suppose it was also stocked with Goodyear TBA when you moved in?

A. No, they were brought in after I opened. I was actually opened four or five days before any stock was brought in.

Q. What were the circumstances leading up to the original stock you bought?

A. I think the stock—it is pretty much of a package they buy, more or less. So that you get coverage of items necessary to open your business.

Q. And who was your Atlantic salesman at that time?

A. John Roberts.

Q. And did Mr. Roberts introduce you to the Goodyear supply point at that time?

A. I had contact with them before through dealer training school and I worked in several stations waiting for my station to be opened and in this training course.

Q. Who is the Goodyear supply point?

A. Goodyear service store.

Q. Where is it located?

A. Townsend and Water Street.

Q. Is that in Syracuse?

A. That is right.

3583 Q. How many miles is that from your station?

A. I would guess three to four miles.

Q. You say you had some contact with the supply point when you were in the dealer training school. How did that come about?

A. Well, we were—it was so long waiting for my station to open, from February until November, that naturally the stations I was in, the Goodyear man came around, the TBA man, and we talked to him—

Q. (Interposing.) Was he supplying those stations that you were in?

A. Yes, he was.

Q. What were those stations? Do you remember the name of them?

A. I was in Warren Sloss's station on Salina Street. I was in Harrold Barclay's station on West Onondaga Street, in Syracuse.. And I was in Arthur Cost's station.

Q. Where was it located?

A. That was on South Salina Street.

Q. Now, when you went to your station, did you yourself get in touch with your Goodyear supply point?

A. When I was ready to open my doors and get into business, I was, I contacted Goodyear and they brought up my opening inventory.

Q. And did that amount to a considerable amount?

3584 A. About \$800.

Q. About \$800?

A. Yes.

Q. With respect to Goodyear tires, how long did you continue to carry Goodyear tires?

A. I still carry them.

Q. You still carry them?

A. That is right.

Q. Do you still stock them?

A. Not too many.

Q. You do carry some tires, though?

A. That is right.

Q. How long did you carry Goodyear tires as your principal stock? Did you at one time carry Goodyear tires as your principal stock?

A. Yes, I did, when I first opened up.

Q. And how long did you continue—when did you begin to stock Firestone?

A. I started a little over two years ago with Firestone.

Q. So it wasn't until sometime in 1956 that you began to stock Firestone?

A. I had some Lee tires in between Goodyear and Firestone.

Q. You started with Goodyear—your principal stock of tires—beginning in 1952, that was Goodyear; is that right?

A. That is right.

3585 Q. And you have carried some Goodyear or you have carried Goodyear since that time; is that right?

A. That is right.

Q. Then, after '52 you began to—did you begin to stock Lee tires primarily?

A. Not primarily. I kept the two of them; mainly it is a service problem again. I could get delivery fast on the Lee tires, and it was a credit problem, too. I had a credit limit with Goodyear, and it meant running down with a check and when the other people would bring them without any problems, we bought 50 or 60 tires from Lee.

Q. You say you had a credit problem?

A. They put a credit limit on you when you are a new dealer.

Q. That was the reason you didn't buy more Goodyear tires from Goodyear, is that right, because of the credit limit?

A. No. It was just the idea that the man in the store wanted me to drop everything there and run down to the Goodyear store with a check and I told him to send up the tires and I would give the driver a check for them. He didn't want to do that. I had to come down there and pay for me. I dialed the Lee man and he dropped me off 50 tires without asking me.

Q. Were the Lee tires dropped on consignment?

A. They were billed 30 days.

Q. And the Goodyear tires, there was a COD problem?

A. After you reach a certain credit.

3586 Q. When did you start to carry Lee tires, do you recall?

A. Sometime in '53. I can't remember when I had the problem with Goodyear. In the spring I am sure it was, because we were piling them outdoors again for a big tire display.

Q. In '53 you began to carry some Lee, but you were also carrying Goodyear at that time?

A. That is right.

Q. And you continued to purchase from the Goodyear service store. Whatever Goodyear you have purchased has been from the Goodyear service store; is that right?

A. That is correct.

Q. Then, moving along, it wasn't until, did you say sometime in '56 when you began to purchase Firestone?

A. That is right.

Q. Does Firestone send the tires in on consignment?

A. No, they are billed to me.

Q. How many days do you have to pay for those?

A. Thirty days.

Q. But you have no credit—

A. Once in a while we have a spring dating or fall dating with your snow tires, but Goodyear has the same thing. I think most tire companies do.

Q. But you have no credit limit with the Firestone?

A. I have no credit limit with them, no.

Q. Now, with respect to your batteries, you originally stocked Goodyear batteries; is that correct?

A. That is right.

Q. And how long did you continue to stock Goodyear batteries?

A. Up until about two years ago.

Q. Do you still carry some Goodyear batteries?

A. No, none at all.

Q. So, again in about 1956 you discontinued stocking Goodyear; is that right?

A. That is right.

Q. And at that time did you take on Auto-lite batteries?

A. That is right.

Q. From Mr. Byrnes?

A. That is right.

Q. Where is Mr. Byrnes located?

A. He is in downtown Syracuse. He is a little farther away, not too much, four or five blocks, than the Goodyear outfit.

Q. Now, with respect to accessories, do you purchase accessories from the Goodyear service store?

A. Not too many anymore, very few.

Q. Is that the result of the friction you had with the Goodyear?

A. That is right.

Q. Do you carry many accessories?

A. Quite a few.

Q. Are some of those purchased from Mr. Byrnes, too?

3588 A. I purchase some from him. I get the majority of them from Onondaga Supply.

Q. Do you have a mechanic at your station?

A. Yes, we do some tune-up work.

Q. Do you purchase hard parts from Onondaga Supply?

A. Yes, sir.

Q. Do they constitute the bulk of your purchases from Onondaga Supply?

A. No. I think plugs, points, mostly—you are talking about hard parts; you mean gears and clutches?

Q. That is right.

A. We don't do any major overhaul in that form. It would be just tune-ups, points, and condensers, and spark plugs, and so forth. It would be classed more than TBA probably than hard parts.

Q. You were shown some advertising matter, advertisements identified as R-A-22, 23, 24, and 25 for identification. I haven't examined these carefully, but do most of them include ads relating to Firestone tires?

A. Most of them do, within the last two years.

Q. Now, since 1956, have you stocked Firestone batteries, Auto-lite batteries, rather, only?

A. That is right.

Q. Would you look at RA-22 for identification, and tell me if this ad on the first page is an ad of your service 3589 station (handing document to the witness)?

A. It is.

Q. I call your attention to the fact that you are advertising Firestone batteries; is that right?

A. That is right.

Q. You were selling Auto-lite batteries?

A. I can sell either Auto-lite or Firestone. I can sell anything I want to actually, even Goodyear batteries.

Q. What is the purpose of advertising Firestone if you are selling Auto-lite?

A. I want the ad in there. This mailing piece is more

or less set up the way you want it, and I can sell Firestone batteries. There isn't anything that says I can't.

Q. Well, I understood you to say that you didn't carry Firestone, but do you carry that on a fill-in basis

A. If somebody came in and asks for a Firestone battery, I could get it.

Q. Was this ad paid in part by Firestone?

A. That is right.

3590 Q. Did they pay for the whole thing?

A. No, they didn't, I paid for part of it. The mailing cost more or less is my expense on the thing. They furnish the flyers and print them the way you want them printed and put in it what you want in it.

Q. The reason you put in Firestone batteries instead of Auto-Lite is because Firestone was sponsoring the ad in part, isn't that correct?

A. Probably.

Q. Well, that is a fact, isn't it?

A. Not necessarily, no.

Q. Now, the ad of the type identified as RA-22 is referred to as a mailing piece; is that correct, sir?

A. That is right.

Q. You have issued these just since 1956, is that right?

A. That is right.

Q. And how many have you issued?

A. I think a mailing consists of about 6500 of these.

Q. How many times have you issued this particular one?

A. This particular one just once.

Q. Now, let's take RA-23. Would you state what that is again?

A. That is an ad from the little local paper that we have in our section.

Q. As I understand your testimony this type of  
3591 ad has only been placed since 1956, is that right?

A. That is right.

Q. And how many times have you placed an ad of that type?

A. I get one every fall along with the snow tire season.

Q. So you would have placed that—

A. Twice probably, not the same particular type of ad, not the identical ad, but an ad similar to that.

Q. An ad similar to that you would have placed how many times, once a year?

A. Yes, with snow tires, a big one. We run a little one, like the other one you have there, usually weekly.

Q. RA-24?

A. Something of this type or that type we run weekly just to keep our name in there.

Q. And RA-24 has only been run since 1956, is that right?

A. Yes, sir. Actually, this paper has only been in existence since 1956.

Q. And actually, you only handled Firestone since 1956?

A. That is right.

Q. And in RA-24 I notice that you also advertise Goodyear?

A. That is true.

Q. And isn't it true that in shopping time you also run ads advertising Goodyear tires from time to time?

A. I haven't lately. I am going to put a Goodyear snow tire ad but I haven't run an exclusive Goodyear 3592 ad. I usually mix the two like you see there.

Q. You usually mix Goodyear and Firestone?

A. That is right.

Q. You testified concerning the national brand names contest. We didn't have the year when that contest ran.

A. That was 1956 and 1957, I believe.

Q. Which was the year when you were the finalist?

A. Last year, I was finalist both years but I was quite a ways back the first year.

Q. You were also asked if you were called upon to speak at dinners for new dealers; do you recall that?

A. That is right.

Q. What type of a speech would you give? What subjects would you discuss?

A. I usually talked about pitfalls that they can get into and about selling brand names mostly, to keep from explaining why the thing is as good as a brand name.

Q. I didn't get your last answer. To keep—

A. To try to impress a new dealer in selling a brand name article instead of trying to sell an off-brand that is supposed to be just as good. It doesn't move as readily.

Q. Do you talk to them about advertising brand names?

A. Yes, I do.

Q. Do you believe in advertising brand names in your station?

A. Very much so.

3593 Q. In your station?

A. Yes, sir.

Q. Do you still have the Goodyear outdoor sign on your station?

A. I don't have a Goodyear pole sign or an outdoor sign.

Q. Do you have the Goodyear window valance?

A. Yes.

Q. Why is it you have Goodyear up there if you are selling Firestone tires?

A. I want it up there because I sell both kinds of tires.

Q. I understood you to say that you were stocking Firestone tires principally; is that correct or incorrect?

A. Principally, yes, but I still handle the Goodyears.

Q. When you say "principally" what do you mean?  
What in terms of percentages—

A. I still carry some Goodyear tires as I told you before.

Q. Well, what is the ratio of Firestone to Goodyear?

A. I would say about 90 percent Firestone.

Q. And you still prefer to advertise Goodyear?

A. Sure, because I sell both of them.

Q. How do you account for that?

A. Because everybody doesn't like Firestone tires.

Q. If you were selling them you would try to advertise them?

A. I take the lesser of two evils and if they don't like Firestone I will sell them Goodyear.

Q. Did you every try to put a Firestone sign up there?

A. No, I haven't had occasion to. I have got Firestone batteries outside.

Q. Isn't it a fact that you can't put the Firestone val-  
ance in your station?

A. I haven't been told I couldn't.

Mr. Ballard: I object to that.

Hearing Examiner Kolb: Objection will be overruled.

By Mr. Kelaher:

Q. I haven't asked you that you haven't been told that you can't. You know that you can't.

A. I don't know I can't put a Firestone tire.

Q. You haven't tried?

A. If I wanted a Firestone sign I would put it there.

Q. The fact remains that you have been selling Fire-  
stone for several years and you haven't tried to put it there?

A. No, I haven't had occasion to.

Q. You, of course, know that Atlantic is sponsoring Goodyear in that area?

A. It doesn't make any difference to me.

Q. Just answer the question Yes or No.

A. Yes, I know they sponsor Goodyear.

Q. And isn't it true that the Goodyear window valances appeared in the three stations at which you 3595 worked and the outdoor pole signs were up at those stations, Goodyear signs?

A. I would say Yes.

Q. Isn't that generally true of the Atlantic stations in the whole Syracuse areas?

A. I think that is one of the things they put in when they open the station doors and they remain there.

Mr. Kelaher: No further questions.

Mr. Ballard: I would like to offer in evidence Atlantic Exhibits 22, 23, 24, and 25.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibits A-22 through A-25.

(The documents heretofore marked for identification RESPONDENT'S EXHIBITS Atlantic 22 through 25 were received in evidence.)

Mr. Ballard: Thank you very much, Mr. Rhoades. I have no further questions.

(Witness excused.)

Mr. Gordon: Mr. Cary.

3596 REUBEN CARY was called as a witness for the Respondent Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Gordon.*

Q. What is your name?

A. Reuben Cary.

Q. What is your home address?

A. 801 First North Street, Syracuse, New York.

Q. What is your station address?

A. 1100 North Salina Street, Syracuse, New York.

Q. Now, Mr. Cary, when did you become associated with Atlantic?

A. June 1946.

Q. And in what capacity was that?

A. As an employee.

Q. Of what?

A. Service station.

Q. Service station employee?

A. Yes.

Q. You then became a lessee, when did you become a lessee?

A. Two years later, approximately a year and a half would be correct.

3597 Q. What year would that be?

A. That would be about 1948, during the year of

'48.

Q. Where were you a lessee?

A. Originally at 3111 West Tennessee Street.

Q. Syracuse?

A. Syracuse.

Q. And how long were you a lessee there?

A. Nine months.

- Q. Then did you move to another station?
- A. That is right.
- Q. As a lessee?
- A. Right.
- Q. Where did you move to?
- A. To 1100 North Salina Street.
- Q. That is your present station?
- A. Present address.
- Q. And you have been there ever since?
- A. That is right.
- Q. What is the term of your present lease?
- A. Three years.
- Q. What kind of tires are you now carrying in your station?
- A. I have Goodyear and I have Pennsylvania and I have Coopers.
- Q. Restricting yourself now to the past six to twelve months what percentage of your tire purchases have been Cooper and what Pennsylvania, and what Goodyear? Roughly?
- A. Pennsylvania I haven't bought any recently in that period of time; Goodyears would be roughly five percent; the rest is all Coopers.
- Q. What kind of batteries have you purchased in the last year or so?
- A. Goodyear and Lee.
- Q. About what portion of each?
- A. About fifty-fifty.
- Q. Now, where have you gotten your accessories and when I speak of accessories I am talking about spark plugs, fan belts, waxes, polishes, and the like. I am excluding hard parts or repair parts. Where have you purchased your accessories, let's say, since 1951?
- A. Some Goodyear; Onondaga Auto Supply, Niles Auto

Supply; Unit Parts, Group Parts, those are two different outfits; Empire Auto Supply.

Q. Now, again restricting yourself just to accessories and I have defined them, what portion of your accessory purchases have come from the Goodyear service store signs, oh, roughly 1951?

A. Not over 10 or 15 percent.

Q. You became a lessee in about 1948. What kind of tires did you carry between '48 and '51?

A. Lee. I had Lees in there then:

3599 Q. Mainly Lee?

A. Yes.

Q. What kind of batteries did you carry during that period?

A. Exide.

Q. Then in 1951 when Atlantic took on the Goodyear program what kind of tires did you then purchase?

A. Then I started to buy Goodyear.

Q. Why did you buy Lees up to '51?

A. Well, I am a short distance from the bulk plant. I am the closest to it probably. It is just a matter of probably ten blocks, and they warehoused them there. So, Atlantic was affiliated with Lee tires and the plant was close by so I just went along with them and I compared them, it was easy to go in and pick them up day or night, there is always somebody in the bulk plant.

Q. In 1951 when you took on Goodyear why did you buy Goodyear tires?

A. Well, of course, mainly because I thought Goodyear was going to be a better deal in the Atlantic station, to tell you the truth.

Q. Then, did you continue to purchase Goodyear for any length of time?

A. '52, I believe is when I switched.

Q. What did you switch to?

A. Pennsylvania.

3600 Q. And how long did you carry Pennsylvania tires?

A. Up until last year and I still have some.

Q. What portion of your purchases from '52 until last year were Pennsylvania tires?

A. Pretty exclusive there for awhile.

Q. Why did you buy Pennsylvania tires?

A. Well, first of all I liked the people and I liked the deal. I thought I was getting a better deal with Pennsylvania than I was with Goodyear, and the service was another problem. Of course, that changed as time went on, but at that particular time that is what I was happy with.

Q. Why did you switch from Pennsylvania to Cooper?

A. Almost for the same reason. Because Cooper now has a bulk plant in Syracuse. Of course, price is always an item. And I also didn't want my name advertised in a Goodyear ad for \$1.25 a week. I don't like to do business that way. So, therefore, I didn't go with the ad anymore and they just took it out, period.

Q. Now, did you have a tire rack on which you displayed tires?

A. Yes.

Q. What kind of a tire rack is that?

A. Cooper.

Q. Is it identified with Cooper?

A. Cooper is right on the top of it.

3601 Q. Large sign on top?

A. Large letters, that is right.

Q. Do you have a valance in your station?

A. Yes.

Q. Window valance?

A. Yes.

Q. What kind is that?

A. Pennsylvania

Q. Do you have tire stands on which to display tires?

A. Yes.

Q. What kind are they?

A. Lee, Cooper, Goodyear, Pennsylvania.

Q. Now, the accessories and TBA items are displayed openly then, aren't they?

A. Oh, yes.

Q. Anybody can see them?

A. Yes.

Q. I show you this document and ask you to identify it.

(handing document to the witness)

A. Well, that is some billheads I had printed up by Pennsylvania. They supposedly had a good price on them so I bought them from them. It was the proper thing at the time.

Q. When was that?

A. About '53, I think it was I acquired them.

3602 Q. Have you used those since that time?

A. Oh, yes.

Hearing Examiner Kolb: Do you want an exhibit number on this?

Mr. Gordon: Yes, I think we had better mark that RA-26 for identification.

(The document referred to was marked RESPONDENT'S EXHIBIT 26 for identification.)

By Mr. Gordon:

Q. This is on the top of RA-26 the symbol for the Pennsylvania tire company.

A. The Pennsylvania Keystone, that is right.

Q. Now, let me show you this document and ask you to identify that (handing document to the witness)?

A. That is a mailing card for a follow-up system that I mailed out to customers, to my regular customers.

Q. And it is to advertise what tire?

A. Pennsylvania tires.

Q. And you purchased these yourself?

A. Yes.

Q. And mailed them out yourself?

A. That is right.

Mr. Gordon: Will you mark this RA-27?

(The document referred to was marked Respondent's Exhibit 27 for identification.)

3603 By Mr. Gordon:

Q. Now, let me show you this document and ask you to identify this (handing document to the witness).

A. This is a printed up handout that you hand out in the station to customers as they come in. It is not mailed.

Q. Did you purchase that yourself?

A. Yes, I did, with the printing, you had to pay for the printing; that is right.

Q. And you distributed that yourself?

A. That is right.

Q. And it identifies itself with what tire?

A. Pennsylvania tires.

Mr. Gordon: Will you mark this RA-28 for identification.

(The document referred to was marked RA-28 for identification.)

By Mr. Gordon:

Q. Now, I ask you to examine this paper and identify it, please (handing document to the witness).

A. That is an ad I ran in a northside magazine called the Scotsman, neighborhood newspaper.

Q. And when was that ad run?

A. December 15, 1954,

Q. Was it run at any other time?

A. The one previously to this was nearly the same

3604 ad, the week before.

Q. And what does it advertise, what product?

A. Pennsylvania tires and batteries.

Mr. Gordon: Will you mark this RA-29?

(The document referred to was marked RA-29 for identification.)

Mr. Kelaher: For the record I don't think—I think inadvertently it advertised Pennsylvania tires and batteries, actually that is not correct. It advertises Pennsylvania tires but not Pennsylvania batteries.

Mr. Gordon: Well, we will let the document identify itself.

By Mr. Gordon:

Q. Now, did Atlantic ever tell you to stop distributing these documents or not to advertise as you have?

A. No, never have.

Q. Did Atlantic ever tell you to stop buying Pennsylvania or Cooper tires?

A. No.

Q. Did they ever tell you to take them out of your station or hide them?

A. No.

Q. Now, I show you this document identified as CX-150, which is a letter dated March 1, 1951, on the stationery of Mr. Colley and ask you to examine that letter and tell 3605 me whether you recall receiving it (handing document to the witness)?

A. Yes, I remember receiving it.

Q. Now I show you this document which is marked CX-206 and it is dated August 1952 on Mr. Colley's stationery, entitled "A restatement of Atlantic's TBA policy" and ask you whether you remember receiving that (handing document to the witness)?

A. Yes.

Q. I show you this document which is marked CX-207 and is identified as a no forcing letter, and it is dated

June 1955. In your case I believe you would have gotten that from your regional manager. Do you recall receiving such a letter as that (handing document to the witness)!

A. I remember the letter very well. I was probably one of the first dealers in that district to switch to other than Goodyear tires. So I would get the letter probably first.

Q. Do you have a sign in the window of your station indicating you are a member of the National Federation of Independent Business, Inc.?

A. Yes, there is.

Mr. Gordon: I have no other questions, but Mr. Kelaher may have some.

#### 3606. *Cross-Examination by Mr. Kelaher.*

Q. Mr. Cary, in what type of an area is your station located? Are you in the business section of Syracuse or residential section?

A. I am on Maine Route 11, that is north-south route, but on all other sides of me are strictly residential.

Q. Is that a low-cost residential area or high-cost?

A. It is medium, I would say.

Q. Now, you became an Atlantic lessee dealer in 1948, correct?

A. Right.

Q. And at that time you began to carry Lee tires and Exide batteries, is that correct?

A. That is correct.

Q. And that was the Atlantic TBA arrangement at that time, was it not?

A. There was a quantity of them in the station at that time and when I took the station, I mean, I bought the merchandise that was in it.

Q. Did you take over the station from another dealer?

A. Yes.

Q. It wasn't a new station?

A. No, I took it from the company, it was a company-operated station.

3607 Q. It was a company-operated station and you went in as the lessee of that station?

A. That is right.

Q. And it was stocked with Lee tires and Exide batteries?

A. Yes.

Q. And did it also have the accessories in the Atlantic program, Fram oil filters?

A. As I remember it had quite a few of them, yes.

Q. Now, you continued to carry Lee, Exide, and Atlantic accessories during the nine months you operated that first station as I understand your testimony, is that correct?

A. Yes.

Q. Then you moved to your present station. Was that a new station or did you take over from another dealer?

A. No, that is the company-operated station.

Q. Beg pardon?

A. That used to be the company-operated station, the one at 1100 North Salina Street. Not the one before that.

Q. Is that the one you have been talking about?

A. That is the one I was referring to; I am sorry.

Q. Let's go back to your first station. When you first became a lessee Atlantic dealer at 3111 West Tennessee Street?

A. Yes, I did.

Q. There, did you handle Lee tires, Exide batteries?

A. There weren't any in that one.

3608 Q. You mean there weren't any in stock?

A. That is right.

Q. Did you handle TBA in that station?

A. Yes, I grew into it.

Q. And it was Lee tires and Exide batteries?

A. That is right.

Q. And the Atlantic accessories?

A. Pretty much, that is true.

Q. Now, coming back to your present station, you stated that the reason you bought Lee—let me ask you this: Would you state again why you handled Lee tires?

A. At the 1100 North Salina Street address?

Q. Yes.

A. Of course, originally there were Lee tires and batteries in there.

Q. Exide batteries?

A. Exide batteries, that is right, they were buying Exide batteries.

Q. You testified the Lee warehouse and plant was near your station?

A. That is right.

Q. And is the Lee warehouse still there?

A. No, Atlantic was the distributor for Lee tires at that time:

Q. Is a bulk plant?

3609 A. The Atlantic bulk plant.

Q. An Atlantic bulk plant?

A. That is right.

Q. Isn't there a Lee warehouse in Syracuse?

A. There is now, yes.

Q. And it has been there for sometime, hasn't it?

A. Well, since the separation from Atlantic, yes.

Q. So, it goes back to 1951 approximately?

A. Approximately, I don't know the exact date, but somewhere in there.

Q. So you would have been able to get Lee tires?

A. Yes, I did, that is right. I could and did.

Q. You could and did after Atlantic swung over to the Goodyear TBA program?

A. That is right.

Q. At that time prior to the time when Atlantic began to sponsor TBA did you have a Lee tires window valance or an Exide standard in your station?

A. That is right. They were in the window.

Q. What happened after the changeover to Goodyear TBA?

A. They came down, of course; Goodyear went up. It didn't make any difference to me, so, of course, they put them up.

Q. You didn't ask for them?

A. As far as the conversation was concerned I couldn't say. But I know the Lee signs came down and the Goodyear went up.

3610 Q. And did the Exide go down?

A. All that said is batteries. My windows are too small. I have an older station I can't get all the things in it these new stations can.

Q. I was going to ask you what kind of a station. Was it one of the older Atlantic stations?

A. You have got one down here, about the same age I saw coming in; 1933 or '34 it was built.

3611 Q. Is that the type—

A. (Interposing.) Small front, I think that is what they called it. It is that type of structure.

Q. And it has the small frontage?

A. Small door in the front, and 2 small windows on the front, that is all.

Q. You don't have much room for displaying anything?

A. Not inside, except on the shelves which I have now which we didn't have then.

Q. Now, when Atlantic began to sponsor Goodyear

TBA, was that when you began to purchase Goodyear tires, batteries, and accessories?

A. That is right.

Q. Who was your supply point for Goodyear?

A. Goodyear service store.

Q. In Syracuse?

A. That is correct.

Q. Well, the reason you began to purchase Goodyear was because Atlantic began to sponsor Goodyear; isn't that correct?

A. I think indirectly that is probably true. I mean, I don't, there was no pressure on it, if there was I would have remembered it.

Q. But you thought it was the thing to do?

A. Yes, that is right. It was along with the company, so you naturally go along with it until something 3612 arises whereby you decide not to do it.

Q. I would like to clarify this point. You testified on direct examination that you didn't want to pay \$1.25 a week for some Goodyear advertising. Will you explain that in a little more detail?

A. Well, a good many of the dealers, and they are still doing it, fellows who carry Goodyear tires exclusively, there usually is an ad run in the local newspaper, not small ones like these, and usually the dealers are listed in there who carry Goodyear tires, and there is probably a special of one nature or another. The dealers are listed in there and each one of them participates, I think a couple dollars, I believe in that. I am not sure of the exact amount. And it usually states that it is \$1.25 down—now it is less than that, and \$1.25 a week.

Q. This would be the selling price of the tire?

A. That is right. Exclusive of the price that it is listed at, and I didn't feel that I wanted to go along for \$1.00 or \$1.25 a week; so, I decided not to do it anymore.

Q. And if you had continued it—is your name put in that ad more or less automatically if you carry Goodyear at Atlantic stations?

A. Not unless you pay for it.

Q. And is the bill sent to you in a package-type of dealer from Goodyear or from Atlantic?

3613 A. I think it was included on the monthly statement. I couldn't be positive, but I think that is the way that was handled.

Q. But if you did want to put your name in the ad, you had to meet those terms; is that correct? If you wanted your name to appear in the ad?

A. If I put that advertising in, I have to go along with the advertising. I would have had to have done it there. I wanted my name taken out of that type of advertising because I didn't want to do it.

Q. And you say the only way you could do it was to stop buying Goodyear tires?

A. I would say that was the beginning of not buying Goodyear tires.

Q. And what happened after that?

A. Well, I didn't like the prices that they were being sold at. I couldn't make any money on it, at my buying price.

Q. And could you purchase Pennsylvania tires at a lower price?

A. That is right.

Q. And can you purchase Cooper at a lower price?

A. That is right.

Q. And can you sell them at a lower price?

A. I can, yes.

Q. So, it was to your financial advantage to handle some tire other than Goodyear?

3614 A. That is one reason, that is correct.

Q. Now, give us some other reasons. You say that is one reason. What are your other reasons?

A. Let's go back to the service problem again.

Q. All right. What was the service problem?

A. It is better today, but back in those days you might wait two days for a tire if you ordered it.

Q. That is from the Goodyear service store?

A. That is right.

Q. Did the same thing apply to batteries and accessories?

A. Pretty much the same across the line.

Q. So, the supply point supplying all the Atlantic dealers in your area, is that correct?

A. That is right.

Q. So that had a pretty stable market there, didn't it?

A. That is right. As far as I know you had to buy them from there. Of course, there is another dealer now, Kearney. You can buy from him now.

Q. You can buy from him instead of from the Goodyear service store?

A. That is right.

Q. Is Kearney a designated supply point under the Atlantic set-up, too, do you know?

A. I don't know how to answer that. I don't know for sure.

Mr. Gordon: I don't think the witness knows.

3615 By Mr. Kelaher:

Q. Now, you stated that you have somewhat of a small station. Do you have much space for stocking tires in there?

A. No, I have more now than I had. I have two racks in the back, iron-type racks inside the building.

Q. When you stated that you, starting in 1952, you began to purchase Pennsylvania tires; is that correct?

A. That is correct.

Q. And did you continue to purchase some Goodyear tires?

A. Only as the customers demanded them.

Q. Now, what was your stock of Pennsylvania tires at that time?

A. In number of tires?

Q. Units, yes. Number. Approximately.

A. I would say about 250 or 300 tires.

Q. And you carry a fairly large stock?

A. Not at the time I am not now, no.

Q. What is your stock now?

A. It is down now to about a hundred.

Q. And they are mainly Coopers?

A. Yes.

Q. Five percent Goodyear?

A. That is right.

Q. So, you are carrying, you only have five Goodyear tires in stock?

3616 A. There might be seven. It has got to be an even number, it would have to be eight.

Q. All right, eight percent.

A. All right, eight percent, that was an approximate figure.

Q. How about your batteries? Do you carry a substantial stock of batteries?

A. Not too many, no, because I don't have the space again.

Q. How many batteries do you carry in stock?

A. There is about 12 there right now.

Q. So, when you say 50 percent Lee, you are referring to six batteries?

A. That is right.

Q. And the other 50 percent are Goodyear; that is, six batteries?

A. That is right.

Q. Now, how about your stock of accessories? Do you carry a large stock of accessories?

A. As much as the shelves will hold. A fair supply.

Q. You said among your suppliers, you mentioned that a couple of parts suppliers, Unit Parts was one, I believe?

A. That is right.

Q. What do you buy from Unit Parts? Are you referring to ignition parts and things of that type?

A. Things that they carry that the other places don't have. Nothing in hard parts, no, I don't deal in those.

3617 Q. You don't do any mechanics—do you have a mechanic at the station?

A. Only in ignition work of that nature, nothing in clutch work or brake work.

Q. So your purchases from these parts suppliers would be for work in the repair of automobiles, would it not?

A. They would be mufflers or something of that nature.

Q. Do you purchase your Cooper tires on consignment or outright?

A. Outright, 30 day billing.

Q. Do you have an outdoor poll sign on your station, or don't you have room for an outdoor pole sign?

A. Are you speaking of a Goodyear sign or any—

Q. (Interposing.) Do you have an outdoor pole sign?

A. There is no outdoor pole sign except the Atlantic sign. That is all there is right now.

Q. In other words, you never had a—you don't have a Cooper outdoor pole sign?

A. No, I don't.

Q. Do you have a Cooper sign in your station, on the windows?

A. It is right on that tire rack which is movable inside or outside. I can take it in or out as the weather permits. It is on the top of that.

Of course, the current literature that is out on snow tires is posted around the station.

3618 Q. You were shown a number of ads relating to Pennsylvania tires, and you say one that relates to Pennsylvania batteries. I am referring to RX-A 27, 28, and 29. Do you recall those? They all deal with Pennsylvania tires, and one refers to Pennsylvania batteries?

A. That is right.

Q. You don't use those anymore, do you?

A. Pennsylvania tires?

Q. Did you not say you stopped handling Pennsylvania tires?

A. No, I still have some, yes. I still have some in the station.

Q. Beg pardon?

A. I still have some in stock.

Q. You are just selling the inventory you have on hand before you switch completely over to Cooper?

A. That is right.

Q. Do you still advertise Pennsylvania tires?

A. Like this, no.

Q. Mr. Cary, you continued to purchase accessories from Goodyear service store, isn't that right?

A. Do I now?

Q. Do you now, yes.

A. Yes, some thing, yes.

Q. You have continuously since Atlantic began to sponsor Goodyear TBA, haven't you?

3619 A. There is probably months when I haven't, but I usually do get some now and then.

Q. And you estimated ten to fifteen percent were from Goodyear stores?

A. Not anymore than that.

Q. I am going to show you the ad, identified as RX-A-29, and did I understand you to say that that ad was just run one other time?

A. One before, yes.

Q. One before that?

A. Yes.

Mr. Kelaher: No further questions.

Mr. Gordon: First, I would like to offer RX-A-26, 27, 28, and 29.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibits A-26, 27, 28, and 29.

(Whereupon, the documents, heretofore marked RESPONDENT (ATLANTIC) EXHIBITS 26, 27, 28, and 29 for identification, were received in evidence.)

*Redirect Examination by Mr. Gordon.*

Q. Now, Mr. Cary, I would like to show you this picture and ask you to identify it.

3620 A. Well, that is my station.

Q. When did your station look that way?

A. It looks like—that must be last fall or early spring—no, it must have been in the fall.

Q. In the fall of 1958 or '57?

A. That would have to be '57.

Q. Fall of 1957?

A. That is right, because of the merchandise there, it had to be.

Q. That is an accurate representation of your station in 1957?

A. That is right.

Mr. Kelaher: On a given day in 1957.

Hearing Examiner Kolb: Do you want this marked as an exhibit?

Mr. Gordon: Yes, I would like to have that marked.

Hearing Examiner Kolb: A-30.

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 30 for identification.)

Hearing Examiner Kolb: Do you offer that in evidence?

Mr. Gordon: Yes, I would like to offer this in evidence.

Hearing Examiner Kolb: Any objection, Mr. Kelaher?

Mr. Kelaher: No objection.

3621 Hearing Examiner Kolb: Received in evidence as Respondent's A-30.

(Whereupon, the document, heretofore marked RESPONDENT (ATLANTIC) EXHIBIT 30 for identification, was received in evidence.)

Mr. Gordon: I have one other question.

By Mr. Gordon:

Q. The bills for the cooperative advertising that were discussed before, those bills were from Goodyear, were they not, Goodyear cooperative advertising?

A. Yes.

Q. And the Cooper tire rack that we discussed before, isn't that a large rack, about six feet high?

A. Yes, two tier rack, with ten tires to a rack. It is on wheels. It can be moved inside.

Q. Do you place that out on the driveway of your station?

A. That is right. It is rolled out and put out in front.

Mr. Gordon: I have no further questions.

*Recross Examination by Mr. Kelaher.*

Q. What time of day was RX-A-30 taken? What time of day was this taken?

A. Are you asking me my opinion? I wasn't there when that was taken.

Q. I notice the Cooper tire rack isn't out there. If  
3622 it is there, I would like to have you show it to us.

A. No, it isn't. I didn't have the rack in '57, sir.

Q. All right. Show me a Pennsylvania tire rack then.

A. There isn't any in here.

Q. There isn't any on the picture, is it?

A. The Pennsylvania—

Q. (Interposing.) I am asking you now if there is a Pennsylvania rack out there?

A. No, it is not, sir.

Mr. Kelaher: No further questions.

*Further Redirect Examination by Mr. Gordon.*

Q. You weren't selling Cooper tires then, were you?

A. Yes, I was, but I didn't have a rack. He offered me the rack so I took it. When you get it for free, you take it.

Mr. Gordon: I don't have any further questions.

Hearing Examiner Kolb: That is all, Mr. Cary.

(Witness excused.)

Hearing Examiner Kolb: Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

3623 ALBERT H. SHAFER, was called as a witness on behalf of 'The Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Ballard.*

Q. Mr. Shafer, have you given your name and address to the reporter?

A. No, I haven't. Albert H. Shafer; Present home address, 44 Cleveland Avenue, Colonial, New Jersey.

Q. Are you today, Mr. Shafer, a Goodyear employee?

A. Yes, sir.

Q. When did you first join Goodyear?

A. 1950.

Q. In what capacity?

A. I was a general line sales trainee.

Q. And what were you doing before that?

A. I worked with my father in a Shell service station.

Q. Your sales training lasted until when, sir?

A. July 27, 1950, to approximately January 1 of 1951.

Q. And what position did you then take?

A. As a general line salesman in the Goodyear Pittsburgh district.

Q. What were your duties as a general line salesman there?

3624 A. As a general line salesman, you are responsible for the development of the dealers in your territory in a given territory.

Q. Did that include service stations?

A. Yes, you contacted service stations in the interest of the direct accounts.

Q. By the direct accounts you would mean Goodyear stores or Goodyear direct dealers?

A. Yes.

Q. And how long did your tour of duty as a field representative last?

A. Until approximately May of 1952.

Q. And then what did you become then?

A. I became the petroleum representative for Goodyear in the Philadelphia district.

Q. And what is the duty of a petroleum representative?

A. Well, I contacted or was liaison between the Goodyear district management in Philadelphia and Newark and the Atlantic district management in those two areas.

Q. And would those two areas be what Atlantic calls its Philadelphia-New Jersey region?

A. Yes, sir..

Q. Was your contact limited to Atlantic or did you also contact other oil companies?

A. No, I contacted Atlantic only.

3625 Q. And how long did that job last?

A. From May of 1952 until approximately December of '53.

Q. And what then transpired?

A. I was transferred to the Syracuse Goodyear district.

Q. In the same capacity?

A. In the same capacity, covering the New York region of Atlantic.

Q. And again counseling or service as liaison between Atlantic and Goodyear supply points?

A. Yes, sir.

Q. Was that your function? I don't mean to put words into your mouth.

A. That is right. In other words, in addition to keeping the Atlantic district management, the Atlantic salesmen aware of all the Goodyear promotions, we are responsible to the district to better service the Atlantic dealer through our supplying dealers.

Q: When you say "we are responsible to the district," are you now speaking of the Goodyear district?

A. The Goodyear district.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Mr. Kelaher: On the record.

3626 By Mr. Ballard:

Q. Now, then, how long did your job as petroleum representative in the New York region last?

A. Exactly one year.

Q. That would bring you to December of 1954.

A. That is correct, sir.

Q. And what job did you get then?

A. I was promoted to the division petroleum representative.

Q. And in terms of Atlantic, would that include Atlantic three regions, Philadelphia-New Jersey, New York, and New England?

A. That is correct, sir.

Q. And what was the job of a divisional petroleum representative consist of?

A. Of course, in each region of Atlantic, we had a gentleman that performed the way I did in my previous two assignments, and then we had one man that headed up the entire program.

Q. That is you?

A. And that was myself.

Q. And who was your liaison in Atlantic?

A. Mr. Mulholland.

Q. The head of Atlantic—

A. (Interposing.) TBA sales department.

Q. And how long were you divisional petroleum representative?

A. Until I left in July of 1957.

3627 Q. And what job did you take then?

A. I became the store manager trainee.

Q. Trainee for management of a Goodyear store?

A. Good year service store.

Q. Now, going back to the time when you were petroleum representative to Atlantic region, either the Philadelphia-New Jersay region or the New York region, would you describe in a little more detail your functions in that capacity?

A. Well, number one, your responsibility was to make sure that the Atlantic district and region people were aware of all the current Goodyear TBA promotions. You assisted in the training of Atlantic salesmen by spending time with them either in the field or at their respective training schools and you developed a supplying dealer program to the point that it became more effective and more acceptable to the Atlantic dealers from the standpoint of service, price, delivery, and the things that the normal service station requires to do a good TBA job.

Q. Your duties then, I take it, would include riding in the field with Atlantic salesmen?

A. Definitely, as I said, you would spend time with them, considerable time with them, calling on their dealers.

Q. And what would your function be when they were calling on their dealers, what would you do?

A. Well, most of the time you would, as the Atlantic salesman made his TBA presentation, of course, you were there to help him. It was a form of training while you were working with them.

Q. Did you also take any part in the conduct of training meetings for Atlantic personnel?

\*A. Yes, sir, I did.

Q. And also for dealers?

A. Yes, sir, I did.

Q. Now, when you became a divisional petroleum representative, I take it your duties changed somewhat?

A. Somewhat. You were contacting, of course, Atlantic's TBA manager, the sales department; your basic assignment, of course, was to keep him well informed of any changes in sales programs or product, announcements of new products, to assist in the development of local TBA promotions. And, of course, to continue to work in the field with the Goodyear petroleum representatives and the Atlantic salesmen.

Q. You are, I take it, familiar with Atlantic's TBA policy?

A. Yes, sir.

Q. Do you recall a series of so-called football meetings in the fall of 1952?

A. Yes, sir.

Q. Was that policy discussed at those meetings?

A. Yes, sir.

Q. Would you tell us what you remember about those meetings?

3629 A. Well, I attended three or four. And in each instance the Atlantic dealers were invited to attend, and Mr. Mulholland, who was conducting the meetings at that time, very strenuously reiterated Mr. Colley's policy letter and tried to find out from the dealer group whether at any time they had been subjected to any type of pressure, either from Atlantic and/or Goodyear.

By Mr. Ballard:

Q. Mr. Shafer, will you state to the best of your recollection what Mr. Mulholland said at the meetings?

A. To the best of my recollection, Mr. Mulholland 3630 operated the meeting by covering or re-reading the original letter that Mr. Colley had written to the Atlantic dealers and again stating that they had sponsored the TBA program, the Goodyear TBA program, on the

basis that Atlantic Refining felt that it best offered the best sales and profit opportunity to the dealer, but again it was at the dealer's own election as to what he wanted to buy.

Q. Is that what Mr. Mulholland said?

A. That is right. And then, he just kind of opened the meeting very broadly and asked for dealer comments or dealer objections.

Q. And did the dealers make comments or objections?

A. They certainly did.

Q. And what was the nature of their comments or objections?

A. Well, all the comments and all the complaints that we had were in regard to service, delivery, stocking, etc. The items that are involved in the distribution of the TBA program.

Q. Did you hear any comments or complaints about coercion?

Mr. Kelaher: Objection, your Honor. That is a leading question if I ever heard one.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Ballard:

Q. You may answer.

A. No, sir, I did not.

3631 Q. Now, Mr. Shafer, I think you have testified that you have participated in dealer training schools.

A. Yes, sir.

Q. Atlantic dealer training schools, I mean.

A. Yes, sir.

Q. Did you hear the Atlantic's TBA policy discussed in those schools?

A. Yes, sir.

Q. And was it discussed in approximately the same

terms as you have described it in Mr. Mulholland's statement?

A. Yes, sir.

Mr. Kelaher: I object to that—would you read the last question and answer.

(The reporter read the question and answer commencing at line 10 of this page.)

Mr. Kelaher: No objection:

By Mr. Ballard:

Q. Now, Mr. Shafer, in the course of your duties, have you talked to Atlantic dealers about the Atlantic-Goodyear TBA program?

A. Oh, yes, sir.

Q. On occasion, have they made comments and complaints to you about the program?

A. Oh, sure.

3632 Q. Have they ever made comments and complaints about coercion and forcing them—

A. (Interposing.) No, sir.

Mr. Kelaher: Your Honor, I am going to move to strike that answer.

Hearing Examiner Kolb: The motion will be denied.

By Mr. Ballard:

Q. Do you observe what TBA Atlantic dealers stock and display in their station?

Mr. Kelaher: Objection, unless this man has been all over the three Atlantic regions. Unless we have more specificity, I am going to object.

Mr. Ballard: The question, so far, your Honor, is a perfectly simple one. It can be answered Yes or No. I simply asked him, Does he observe whether they stock them.

Mr. Kelaher: We haven't limited to any geographical area, not only his own area.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Ballard:

Q. Would you answer the question?

A. Would you ask it again, sir.

Mr. Ballard: Would you read the question.

(The reporter read the question commencing at line 8 of this page.)

The Witness: Yes, I do.

3633 By Mr. Ballard:

Q. Well, what kinds of TBA—strike the question.

Do you observe non-sponsored TBA on display in Atlantic stations?

Mr. Kelaher: Objection, your Honor. I think he is leading him. I am going to ask that he phrase his questions so as not to lead him.

Mr. Ballard: It seemed to be a perfectly simple question, your Honor. Again, it could be answered Yes or No. He knows the subject that we are talking about here. It is not a jury case.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Ballard:

Q. Do you?

A. Yes, I do.

Q. Now, in your experience, as you have described it, do Atlantic dealers on occasion buy Goodyear TBA from stores other than their designated supply points?

A. Yes, on occasion.

Q. Do—and again in your experience—do Atlantic dealers who are nominated to Goodyear, included on the list nominated to Goodyear, on occasion not purchase at all or very little from their supply point?

A. Oh, yes. There is a good many dealers in areas 3634 that are inactive in the TBA business.

Q. Would that include dealers who were nominated to Goodyear?

A. Oh, yes.

Q. Going back to the time when you were a petroleum representative in the Philadelphia-New Jersey region, did you observe the salesmen from other TBA suppliers calling on Atlantic dealers in the metropolitan Philadelphia area?

Mr. Kelaher: I am going to object to that question.

Hearing Examiner Kolb: On what grounds?

Mr. Kelaher: Unless he states the reason for the question, in this line of questioning.

Mr. Ballard: The reason seems to be a perfectly obvious question of competition.

Hearing Examiner Kolb: He said district. The objection will be overruled.

Mr. Ballard: Would you read the question.

(The reporter read the question commencing at line 5 of this page.)

The Witness: Yes, sir.

By Mr. Ballard:

Q. About how many TBA suppliers other than Good-year are there in the Philadelphia metropolitan region?

A. I would estimate that there are approximately 150.

Q. Could you describe them by classification?

3635 A. Well, I think you could break them down very simply by saying that the majority of them are in the automotive parts, accessories, and battery business. Very few, if any, handle a major brand line of tire, some of a limited line.

Q. And you are speaking now of the people who are in the parts, batteries, and accessories business?

A. That is correct, sir.

Q. Now, that form—did you say that that formed the majority of the group?

A. I would say so, yes, sir, from my experiences.

Q. And what would the remainder of the group be?

A. There would be tire dealers, tire re-treaders, people who handled the tire and battery line but a limited or no line of accessories.

Q. Would that same general pattern apply to all three regions that you are familiar with?

A. Yes, sir.

Q. Going back to your experience as a representative for all three Atlantic regions, approximately how many Goodyear supply points were serving Atlantic dealers in the whole three regions together?

Mr. Kelaher: Your Honor, I think we have stipulated testimony on this point.

Mr. Ballard: If you will find it for me—

Mr. Kelaher: (Interposing.) With the statistics.  
3636 Mr. Ballard: I don't think the number of supply points is stipulated.

Mr. Kelaher: Yes. I don't have the documents with me because they were the in-camera exhibits, if I recall.

Mr. Ballard: Do you have an objection to this man giving the approximate number so we can get on with it?

Mr. Kelaher: It seems to me if we have the number stipulated—off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Mr. Shafer, let me try this and see if we can get Mr. Kelaher satisfied on this. Mr. Shafer, the stipulation in this case indicates that there were about 160 Goodyear

stores and dealers supplying Atlantic accounts in June of 1956. Would that check with your recollection, sir?

A. That would be very, very close.

Q. It is not stipulated, I believe, how many supply points there were in the New England region. What would your recollection be as to how many there were in the New England region?

A. I would estimate in the New England region there would be close to 90 to 100.

Q. Now, sir, do these supply points encounter competition from the other TBA suppliers that you have described to us?

A. Yes sir.

3637 Q. Is there variation between the supply points in their success in meeting that competition?

Mr. Kelaher: Objection, your Honor. I am not certain where this is going to lead us.

Mr. Ballard: This is the same line of testimony to which Mr. Kelaher objected when Mr. Connolly raised it. It is simply to show the competitive situation; Mr. Kelaher doesn't like to show the competitive situation.

Mr. Kelaher: That is certainly incorrect. You are asking him, as I understand it, whether or not there are varying degrees of success among the Goodyear supply points arising from the competition of other jobbers.

Mr. Ballard: In meeting the competition of other jobbers.

Hearing Examiner Kolb: Read the question, please.  
(Question read.)

Hearing Examiner Kolb: What do you mean by that?

Mr. Ballard: Well, let me withdraw the question and I will see if I can make it clearer because if I explain what I mean I am afraid I would be leading the witness, your Honor.

Hearing Examiner Kolb: All right, let's try it again.

Mr. Ballard: All right, sir.

3638 By Mr. Ballard:

Q. Do these various supply points differ from one another in their success in selling to Atlantic dealers?

A. Yes, sir; they do.

Q. What are the factors that influence their success in selling to Atlantic dealers?

A. The competitiveness of the market, their capacity and ability to service and sell and deliver the merchandise that the Atlantic dealer needs when he needs it.

Q. Now, in your experience which supply points have the greatest success in selling to Atlantic dealers?

Mr. Kelaher: Objection, unless a time is specified.

By Mr. Ballard:

Q. During the time when you were—well, let's say during the time when you were operating in all three regions?

Mr. Kelaher: When is that time?

Mr. Ballard: That is 1954 to 1957. During that period which group of supply points were the most successful in your estimation?

A. I would say that from my experience that the supply dealers in the Philadelphia area-South Jersey area of Atlantic were the most successful.

By Mr. Ballard:

Q. That would include Mr. Kaiser, Elwood Kaiser?

A. Yes, sir.

3639 Q. Mr. Parris?

A. Yes, sir.

Q. Now, is the price charged by the supply point a factor in its ability to sell Atlantic dealers?

A. Very definitely.

Q. Is it true that on occasion the dealer is offered other brands of tires at a lower price than a Goodyear price?

Mr. Kelaher: Objection. I don't know how he would be in a position to testify as to what a dealer was offered.

Hearing Examiner Kolb: I believe you are talking about a general competitive situation. I will overrule the objection.

A. Yes, sir, they are.

By Mr. Ballard:

Q. How are the Goodyear supply points able to compete in that situation?

A. Well, generally speaking we are equipped—the supplying dealer is equipped to offer a competitive price to the Atlantic dealer, but we all recognize that some of these lesser known brands do offer, let's say an extra 5 percent discount to the dealer. But we, in the sales organization and realistically so, try and impress the dealer with the fact that because of Goodyear's acceptance to the motoring public that by handling Goodyear he is going to sell 3640 more with a higher gross profit return; therefore, more money in the bank.

Mr. Kelaher: I don't think the last part of the answer is responsive to the question but I will let it stand.

Hearing Examiner Kolb: I think so, I will let it stand.

By Mr. Ballard:

Q. Now, Mr. Shafer, does Goodyear offer a guarantee on its tires?

A. Yes, sir; we do.

Q. Would you describe the guarantee that goes with the Goodyear tire?

A. Goodyear guarantee, a Goodyear tire bearing our serial number is guaranteed for the life of the tire to be free from defects and workmanship or material, if found

to be defective under these conditions we will either replace it or repair it based on pro rata use and mileage.

Q. Is that the only guarantee you have or is there another guarantee?

A. No, we have a guarantee which covers road hazard injuries which occur in the first 25 percent of the tire's life.

Q. Is that guarantee covering road hazard type injuries made known to dealers handling Goodyear?

A. Yes, sir.

Q. Is it published in your service policy and adjustment program?

A. Yes, sir.

Q. Is that guarantee in your experience as beneficial to the dealer as the so-called road hazard guarantee offered by the other companies?

A. In my experience I have found it to be as good or more adequate in the protection to the dealer and the consumer.

Q. "Offered by" I am speaking now in comparison with the so-called road hazard guarantee.

A. Yes, sir, we feel that our guarantee is comparable or better.

Q. And specifically do you feel it is comparable or better to the Lee road hazard guarantee?

A. Oh, yes.

Q. Mr. Shafer, is the prestige of the Atlantic name a factor in the sales success of Goodyear supply points?

A. Would you repeat that?

Q. I say is the prestige of the Atlantic name, of the name Atlantic, a factor in their success?

A. In the Philadelphia market I would say it was definitely true.

Q. Would it be less true as you get further from Philadelphia?

A. Yes.

Q. About how many tires are there in the Goodyear line?

A. You refer to the complete line or the passenger line?

3642 Q. Let's take a representative passenger tire, take the most popular passenger tire. How many models or grades does Goodyear offer?

A. Well, in our complete passenger line, just taking the six or seven most popular 15 inch and 14 inch sizes which are now up for replacement sale, there is approximately 130 sizes and types.

Q. Is there development and change in that line from year to year?

A. Yes, sir; there is.

Q. Does Atlantic train its dealers in the knowledge of those changes?

A. Very definitely.

Q. Does it also train its salesmen?

A. Yes, sir. Many of those training meetings, of course, the Goodyear people participate in because of our first-hand knowledge of a new product.

Q. Would you describe for us what other things Atlantic salesmen do to promote the sale of Goodyear tires, batteries and accessories as you have observed them?

A. Well, in their normal routine call on the dealers, of course, they check his TBA stock, confer with him on his needs in those particular lines, discuss with him the current promotions, any additions, local advertising, assist the dealer to answer possibly a competitive ad that 3643 he might have seen in the newspaper, phone in orders to the supplying dealer.

I would say that those are the most important things that he does.

Q. On occasion does the Atlantic salesman adjust dealer complaints with the Goodyear store, Goodyear supply point?

A. If the dealer has a complaint at that time the Atlantic salesman is there it usually is brought back either to the dealer or the store, the supplying dealer or the store, either by the salesman himself or is called in over the phone and discussed with the store manager, whoever is responsible for the handling of that account.

Q. Returning for a moment to your capacity as divisional representative, did you find Atlantic helpful to the Goodyear TBA program in that capacity?

A. Yes, sir, they were, because in my time with them, working with them, they were able to supply us with many good ideas that were beneficial to the dealer either through the standard point of practical displays on the outside of a service station, the fact that the dealers through their inquiries had shown a preference for a particular type product that we did not have in our line, the fact that we sometimes ran into problems with credit limitations, things like that that they brought to our attention that were passed on to Akron where our management pass on them.

3644 Q. I believe you mentioned the development in tires from time to time. Could you go into a little more detail on how tire types and models have developed over the course of your experience with Goodyear?

A. Well, of course, probably the biggest development we have had is the announcement and the use of nylon cord in the passenger tires. In addition to that, we announced the captive air type tire.

Q. What is that?

A. That is the two chamber tire that gives the consumer positive blow-out and puncture protection to the effect that he does not have to stop immediately and have the tire repaired because the air is retained on an inside chamber and allows him to go on his way until he can stop at a safe place and have it repaired.

Q. Is that unique to the Goodyear line?

A. Yes, sir, it is. Then we had the announcement of tubeless in 1955. That is when Goodyear announced the tubeless in 1955. In the tire line I would say that that is about it. Of course, your tread designs are constantly changing to meet the demand of the motoring public, to give more safety and traction and so forth.

Q. Are there also changes in order items from time to time in the TBA line?

A. Yes, the big change, of course, in batteries 3645 occurred in about 19—I think it was around that same time, '55, when Goodyear announced the production of the dry-charged battery.

Q. Do filters change from time to time?

A. Yes, they have gone from cotton ways to this new type paper filter. They have new type of air cleaner filters for cars, new type of spark plugs from the standpoint of resistor. Polishes change.

Q. And does Atlantic assist Goodyear in bringing that product know-how to the Atlantic dealer?

A. Yes, sir.

Q. Are there also from time to time changes or new products in chemicals and waxes?

A. Yes, there are, and let's say that DuPont announces a new formula polish or Johnson announces a new formula polish.

Q. And Atlantic, of course, assists in disseminating that information?

A. Yes, sir.

Q. During your tenure as a petroleum representative were you generally familiar with the prices that Goodyear supply points were charging Atlantic dealers for Goodyear TBA?

A. Generally, yes.

Q. During that period was there a change in the level of prices?

Mr. Kelaher: What period are we in now?

3646 Mr. Ballard: Let's take the period 1952 through 1957. Was there a change in the price level during that period?

A. Well, there were price increases.

By Mr. Ballard:

Q. Over the span of the five-year period what would be the price increases on tires?

Mr. Kelaher: Your Honor, wouldn't the increases themselves be the best evidence in this? We are getting in a rather complicated subject if we get into price increases on tires over a five-year period.

Mr. Ballard: Your Honor, I don't want to get into a complicated subject if I can avoid it. I want a statement as to the increase in prices over the period. As your Honor knows, there are a great many dollar figures in the record and I think they should be read against some indication of the price increases.

Mr. Kelaher: I don't think this is quite the way to do that.

Mr. Ballard: If Mr. Kelaher wants to have a full-scale cost study introduced, it will take me sometime to prepare it and introduce it. This man knows how much tires have gone up over the five-year period.

Hearing Examiner Kolb: What has that to do with the issues in this case?

3647 Mr. Ballard: Sir, it is simply this: Your Honor is going to have presented to him figures showing dollar sales and dollar commissions in '52, '53, '54 and '55, and so forth, and I assume some argument is going to be made based on those figures. Now, built into those figures is a price increase, and I simply would like to

show the magnitude of price increase that is built into those figures.

Mr. Kelaher: I think to such general type of testimony I am going to object.

Mr. Ballard: Off the record just a minute?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: Would you read the question?

(Question read.)

Mr. Ballard: Percentage.

The Witness: Twenty-five percent on tires.

By Mr. Ballard:

Q. On batteries?

A. Nothing.

Q. Accessories?

A. About 15 percent.

Mr. Ballard: Cross-examine.

Mr. Correa: I might have a question or two. I assume

Mr. Kelaher would rather have my cross-examination 3648 preceding his than follow it.

*Cross-Examination by Mr. Correa.*

Q. Now, sir, you testified that there were certain lesser known brands of tires which Atlantic dealers and presumably others in the market could purchase at a deeper discount than they would receive on the Goodyear brand?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And you said as I recall your testimony, that in attempting to combat the competitive effect of these greater discounts given on lesser known brands of tires, one of the factors you stressed was the public acceptance which

the Goodyear tire has opposed to lesser known brands; is that correct?

A. Yes, sir.

Q. And you made the argument that the dealer could sell more tires even though his discount or his profit on each tire might be a little less, his gross profit from selling some more tires would be accordingly greater?

A. Yes, sir.

Q. Now, is there also with respect to some of these lesser known brands of tires a quality difference?

Mr. Kelaher: I object to that.

Mr. Correa: Goodyear tire.

3649 Mr. Kelaher: This is cross-examination. This man is an employee of respondent.

Mr. Correa: May the record be clear, if the Court please, that this witness has been tendered by the Respondent Atlantic. The Respondent Goodyear has tendered no testimony, no evidence of any kind or character in this case to this moment and I wish the record to be clear to that effect. This is cross-examination whether my learned friend likes it or not. We must observe the form of proper procedure.

Mr. Kelaher: We are conforming to the form of proper procedure but I think with the Respondent Goodyear a respondent in the case, and if we have an employee of Goodyear here counsel for Goodyear should not be permitted to cross-examine this witness.

Mr. Correa: Without yielding to the first point, great respect and all, this particular question is a good question of anyone, so I don't see why we have all the arguing about it.

Mr. Kelaher: Even if he were with another tire company I would object because I don't think he has been qualified as an expert on quality.

Hearing Examiner Kolb: The objection will be overruled.

By Mr. Correa:

Q. Do you have the question in mind?

3650 A. I think so.

Q. All right.

A. There is a difference in the quality; yes, sir.

Q. Now, is there any—let me withdraw that. Let me ask this question: Is weight a measure of quality at all in tires? Comparative weights?

A. Yes, sir.

Q. For example, does Goodyear put out more than one line of tires?

A. Yes, sir.

Q. They put out a first line, sometimes called the 100 line?

A. Yes, sir, super cushion.

Q. Are there cheaper lines below that?

A. Yes, sir, there are two, the deluxe line and the super cushion.

Q. Would they sometimes in the trade be called second and third lines, respectively? Is there a weight difference between the Goodyear 100 level or first line tire and Goodyear, let's say third line tire?

A. Yes, sir.

Q. For the same size of tire, what is the popular size today?

A. Well, 670x15.

Q. What would that weight difference run, if you 3651 know, approximately?

A. I am going to estimate that it would run in the neighborhood of four to five pounds.

Q. Would you find that same weight difference or a similar weight difference between Goodyear first line

tires and the first line of some of these lesser well-known brands?

Mr. Kelaher: Your Honor, I am going to object. His answer with respect to Goodyear tires, now we are getting into tires of many companies, apparently, and he is going to attempt to answer for all of them.

Hearing Examiner Kolb: I doubt if this man would be competent to testify as to the weight of tires.

Mr. Correa: I don't know why he shouldn't be, he has handled them every day of his life.

Hearing Examiner Kolb: You are talking about ply now or weight?

Mr. Correa: This is weight.

Hearing Examiner Kolb: Isn't that the same thing?

Mr. Correa: No, it is not.

Let me ask the witness. Ply is not the same as weight?

The Witness: No, sir.

Mr. Kelaher: Ply affects weight?

The Witness: Ply affects weight?

3652 Mr. Kelaher: Yes.

The Witness: Not generally.

By Mr. Correa:

Q. What is the significance of weight, tell us the—

A. Well, in a tire, in any given tire there is three component parts. There is your beads which is made up of high tensile steel wire; there is your body which is made up of cord; and the tread, under-tread and sidewalls are made of rubber. Those are the three parts.

Mr. Kelaher: I still have an objection to him testifying as to weight of non-Goodyear tires because I understand from his testimony—

Hearing Examiner Kolb: There is no question before him on that. He just answered the question about the— read the last question.

Mr. Kelaher: The other one is withdrawn then, all right.

Mr. Correa: The other was withdrawn and the last question was answered.

Hearing Examiner Kolb: All right.

By Mr. Correa:

Q. Is it true, sir, that the principal weight difference between a let's say 100 level tires and a third line tire is accounted for by the relatively thicker tread?

A. There is more rubber in the 100 level tire than 3653 there is in the let's say third line.

Q. And most of that more rubber will be on the tread, will it not?

A. It is in two places, the tread and the under-tread.

Q. So it adds up to the heavier tire being a longer-wearing tire, is that not so?

Mr. Kelaher: Objection, your Honor. I don't think he is qualified to get into this subject. They have tests and they have scientists and what have you in their laboratories going into this type of thing every day. This gentleman is a layman, he is not qualified to talk about the endurance tests of tires, whether or not one tire is better or longer lasting because it has more rubber than another, I think we get into all kinds of complications when you are on this subject. I am going to object.

Mr. Correa: It may come as a surprise to Mr. Kelaher, but the Goodyear Company, curiously enough, has a policy of keeping its salesmen knowledgeable of these points, because they want these salesmen to know what they are attempting to sell. He is more than a layman, he has been a salesman and I may say a very competent one, for years.

Mr. Kelaher: I have no doubt, but it is hearsay in so far as this hearing is concerned.

Hearing Examiner Kolb: Objection overruled.

3654 A. I would say the two component parts of the rubber, the tread and the under-tread, give you a longer-wearing tire without any doubt.

Mr. Correa: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. Now, sir, could you tell us whether or not there is any weight difference between Goodyear 100 level tires and the tire line, let's say Vanderbilt tire? There is such a tire, is there not?

Mr. Kelaher: Objection.

A. Vanderbilt?

Mr. Correa: Yes.

Mr. Kelaher: I am going to object to any comparisons.

Hearing Examiner Kolb: Do you know anything about Vanderbilt?

The Witness: The comparative weight we have with it.

Mr. Correa: The question was, is there a difference? That was the first question.

Mr. Kelaher: I am going to object to the question because it is distinctly—

Hearing Examiner Kolb: I don't see what this has to do with this case anyway.

3655 Mr. Correa: I will say this, since your Honor asks, that it seems to me we have been going along throughout these hearings on the basis that all tires are completely fungible and that if a dealer buys a Goodyear tire instead of a "Firecracker" tire then that must mean he can get it \$5 cheaper, that must mean he is doing that because Atlantic is beating him over the head. The fact is, the XYZ tire, whatever you want to call it, is not quality-wise as good a tire as the Goodyear tire and this is known to the

dealers who are, after all, businessmen engaged among other things in the tire business.

Mr. Kelaher: I don't think that is so.

Hearing Examiner Kolb: That depends on your point of view.

Mr. Correa: I think the basic assumption underlying all of this testimony is false, in fact, and I think that ought to be brought out. That is all his testimony is designed to do.

Hearing Examiner Kolb: In other words, you are attempting to prove that Goodyear puts out the best tire on the market!

Mr. Correa: No, I am saying that you can't fairly compare a Goodyear tire to a Pharo or a Vanderbilt or some of these other weird brands that have been featured highly in this testimony. That is what I am saying, I think 3656 this is the fact as anybody who knows beans about the tire business, I am sure, will attest.

Hearing Examiner Kolb: Well, so far we haven't got into the quality of tires as I recall.

Mr. Correa: Well, that is—

Hearing Examiner Kolb: The proposition is this, the man has testified he can get a certain tire cheaper than he could get the Goodyear. He bought the tire cheaper because he could get it on price. He didn't say it was a better tire. It was a cheaper tire and he could sell that to his customers. In some places they have a greater acceptance for one tire than they have for another. Some buy on price, some buy on acceptance. I don't know why we have to get into the question as to the actual difference in construction of these various tires and so forth and so on.

Mr. Correa: Well, I can only repeat—

Hearing Examiner Kolb: I have a hard time figuring out what is your first line tire in the first place.

Mr. Correa: No difficulty by consulting price.

Hearing Examiner Kolb: All right, let's go ahead.

A. There is a difference.

Mr. Kelaher: There is a difference. What was the question now?

(Question read.)

3657 By Mr. Correa:

Q. What is the difference?

A. In weight?

Q. Yes, sir.

A. Two and a half to three pounds.

Mr. Kelaher: Off the record?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Correa:

Q. Which is the lighter tire? You say there is a  $2\frac{1}{2}$  to 3 pound difference between them?

A. The Vanderbuilt, in relation to your custom super cushion line.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Correa: I think the pending question, was that answered?

Hearing Examiner Kolb: The pending question was answered.

Mr. Correa: All right.

3658 By Mr. Corea:

Q. Well, in your experience, Mr. Shafer, as you have described it, do service station dealers ever take quality into consideration in purchasing tires?

A. Oh, I think that by and large they do.

Q. Is that what they have indicated to you in these seven years or more that you have spent going around seeing service station dealers as your exclusive activity?

Mr. Kelaher: I object. In fact, your Honor, I think it is highly irregular for counsel for Goodyear to be cross-examining a Goodyear employee. I don't know whether this was prearranged, but I certainly don't appreciate it, I can tell you that.

Mr. Corea: If counsel cares to cite me some authority for his extraordinary statement, I would be delighted to receive it. In the absence of that, I suggest his remark is improper and out of order.

Have you any authority, counsel?

Mr. Kelaher: Do you admit it was prearranged?

Mr. Corea: Well, I trust you give us credit—

Mr. Ballard (Interposing.) Now, look, I think it is about time for me to get into the act.

Mr. Corea: Making some preparation of our case. Yes, everything we have presented here was prearranged in that case, counsel.

Mr. Ballard: I don't go along with that.

3659 Hearing Examiner Kolb: I think probably you are raising this question of cross-examination without any distinction, because Mr. Corea can use this witness as his own witness and ask as many questions as he wants to.

Mr. Kelaher: I have no objection to his using him as his own witness. He is cross-examining him.

Hearing Examiner Kolb: If ~~he is~~ cross-examining is improper, make the objection beyond the scope of the direct examination. That is all you have to do.

Mr. Kelaher: I made that objection before. If not, I will make it again. I did say he is going beyond the scope of the direct.

Hearing Examiner Kolb: I think he should be called

as your witness, Mr. Corea. This is beyond the scope of the direct examination.

Mr. Corea: I say with great respect the pending question is not. He was questioned intensively as to the factors which went into the competition to sell these service station dealers. Now, I am asking him on that very topic and in exploration of that same topic and amplification thereof, whether or not quality wasn't one of those factors which he failed to mention on direct. This is, indeed, a proper cross-examination, if your Honor please.

Mr. Kelaher: Before he answers that, I am going to move to strike all of his testimony on weights on the 3660 ground it was beyond the scope of the direct.

Mr. Corea: I resist the motion on the ground that it is untimely, among other grounds.

Hearing Examiner Kolb: I don't think it is proper cross-examination anyway. I think you should take this witness as your own witness as co-respondent in this case.

Mr. Corea: Well, I must respectfully—

Hearing Examiner Kolb (Interposing): You can follow the same line of examination. I don't see why we have to get into this hassle about cross-examination.

Mr. Corea: Let me state that because I am not doing it aggressively to be captious. I have up to this moment, at least, offered no evidence on behalf of Goodyear in this proceeding, and it is quite likely that I shall persist in the decision not to offer any evidence on the ground that we have certain objections to the procedure which we made heretofore, and which there is no need to burden the record with again.

I do not understand it to be the law, however, that a defendant, if you wish to call it that, or respondent, who does not wish to offer any testimony or any evidence on his or its own behalf, is thereby deprived of the right of cross-examination of any witness called on behalf of any

other respondent or on behalf of the attorneys supporting the complaint, and if that is the law I must confess 3661 I am not familiar with that. I think I am entitled to insist on my right of cross-examination, which I do insist on for the reason I have indicated.

Mr. Kelaher: I think the law, as I recall it—

Hearing Examiner Kolb: (Interposing.) What difference does it make? Let him go ahead and cross-examine. The objection is overruled. Go ahead. I don't think it is proper, but we will let you do it. You can't accuse me of denying the right of cross-examination even though you are not entitled to it.

Go ahead.

Mr. Corea: Is there a question pending?

Hearing Examiner Kolb: I don't think there is.

(The reporter read the record as requested.)

By Mr. Corea:

Q. In your principal activity instead of your exclusive activity?

Hearing Examiner Kolb: That is with regard to quality?

Mr. Kelaher: That is confusing.

Mr. Corea: The antecedent question contains the quality.

Hearing Examiner Kolb: All right; go ahead.

The Witness: Yes, sir, they have.

Mr. Kelaher: Let's have the question and answer.

3662 I don't know what they have. What is the last—I am getting lost.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Corea:

Q. Is it common knowledge in the trade and by the trade I include people who are engaged in the occupation

you were engaged in during these seven years and also service station dealers, is it common knowledge in the trade thus defined that these differences in quality exist between and among various brands of tires?

Mr. Kelaher: I object, your Honor. Now, we are getting into the whole United States instead of just Atlantic Refining Company, and this area, now he is going to what is common knowledge in the trade. I think that is—I object for a number of reasons. First, it is beyond the scope of the direct. Second, he shouldn't be cross-examining in the first place. And third, I don't think he is qualified to answer it.

Hearing Examiner Kolb: The objection is overruled. Let him answer.

The Witness: I believe that the tire dealers and the service station dealers accept the fact that Goodyear's quality and acceptance in the public's mind exceed the so-called lesser known brands.

3663 By Mr. Corea:

Q. You listed a number of—you were asked to list new developments in the tire line, and you listed captive air and a few others.

A. Yes.

Q. It is true, is it not, that captive air is designed for use on these thru-ways and express-ways where if a tire fails, you may have to go several miles before there will be a place where you can safely change them?

A. That was the basic thinking on which the principle was built.

Q. And I don't believe you mentioned Suburbanite, was the bringing out of Suburbanite tires one of the developments during the course of your seven years or not?

A. We brought on the Suburbanite during my time, and we had a tire called the Stud Sure-Grip tire.

Mr. Corea: You may examine.

Mr. Kelaher: I may cross-examine the testimony adduced through the cross-examination by respondent's counsel, I assume?

Hearing Examiner Kolb: You can cross-examine on everything that you see fit on.

We will take a recess before you do.

(A short recess was taken.)

3664 Hearing Examiner Kolb: The hearing will be in order.

By Mr. Kelaher:

Q. Mr. Shafer, you were a general line salesman beginning March 1, '51, is that correct, to about May '52?

A. January of '51.

Q. January 1 of '51?

A. Fifty-one, yes.

Q. Yes.

A. To approximately May of 1952.

Q. And during all of that time were you in the Pittsburgh Goodyear District?

A. Yes, sir.

Q. And at that time did you call on service stations?

A. Yes, sir.

Q. And beginning—during that time you were on a bonus, too, were you not? You were on a bonus with respect to sales of tires? Weren't you on a bonus system?

A. At one time.

Q. As a general line salesman?

A. Yes, sir.

Q. Now, as a petroleum representative were you also on a bonus with respect to the sale of TBA?

A. No, sir.

Q. Do Goodyear tires have good acceptance in the 3665 Pittsburgh area? Did they at the time you were there?

A. Yes, sir.

Q. You have said a lot of nice things about them. Do those things apply to the Pittsburgh area?

A. Yes, sir.

Q. How successful were you in selling Goodyear tires to Atlantic Service stations in the Pittsburgh area after March 1951?

A. In my territory which was in—my headquarters now were Greensburgh, I only had three active Atlantic dealers—

Q. I'm talking about the—

Mr. Mason: Let him finish his answer.

Mr. Kelaher: You go ahead.

The Witness: I only had three Atlantic dealers in my territory.

By Mr. Kelaher:

Q. You were—

Mr. Mason: Let him finish his answer.

Mr. Kelaher: I'm just defining—

Mr. Mason: Let him finish his answer.

The Witness: In my territory I had three active Atlantic dealers we were selling and I continued to sell after March of 1951.

By Mr. Kelaher:

Q. Now, in other words, you were in—I didn't understand this from your direct testimony because you didn't get into it, but—

Mr. Ballard: Then, your Honor, I move to strike the question and the answer because it's obviously beyond the scope of the direct.

Mr. Kelaher: I'm asking him about his territory as a general line salesman in the Pittsburgh Goodyear district. Let's put it that way. Where were your headquarters?

The Witness: Greensburgh, Pennsylvania.

By Mr. Kelaher:

Q. And how wide an area did you cover?

A. My southernmost town was Monessen and my northernmost town was Indiana. It covered about three counties.

Q. And you didn't get into the metropolitan Pittsburgh area at all? *(C)*

A. No, sir; I was not in the metropolitan area.

Q. As you know in March '51 Atlantic began to sponsor Firestone TBA in that area. Isn't that right?

A. Yes, sir.

Q. Are you familiar or were you familiar with conditions in the Pittsburgh metropolitan area during your term as a general line salesman?

A. No, sir; my major task was in my own territory.

Q. But you did get into Pittsburgh, didn't you?

A. Did I get into Pittsburgh?

3667 Q. Yes.

A. I got into Pittsburgh for conferences, possibly to go shopping.

Q. Did you call on Atlantic stations or were you familiar at all with the Atlantic stations in the Pittsburgh area?

A. In the City of Pittsburgh, no, sir.

Q. And in your whole territory or area you only had three Atlantic stations?

A. The only three dealers that I had that I was selling—

Q. How many Atlantic stations were there?

Mr. Mason: Let him finish his answer. I don't think he completed his answer.

The Witness: There were three Atlantic dealers that I can remember that I was selling when I was on the general line territory. How many more there were I couldn't tell you.

By Mr. Kelaher:

Q. That is the point I'm getting at.

Obviously there were more than three Atlantic dealers in your whole territory, weren't there?

A. At this point I couldn't say that there were more in any great quantity. There might have been some more, but in my territory Atlantic's activity at that time to my recollection was limited.

Q. And wasn't that due to the fact that Atlantic 3668 was sponsoring Firestone TBA in that territory after March '51?

A. No, sir.

Q. Isn't it a fact that Firestone predominated in Atlantic stations in your territory after March '51?

A. No, sir.

Q. You are only familiar with three stations out there, is that right?

A. That is what I am referring to.

Q. You didn't see the other stations in your territory at all?

A. Atlantic stations?

Q. I'm talking about Atlantic stations.

Mr. Mason: I object to the question because it misstates the prior or it proceeds on a misconception of the prior testimony of the witness. As I understand his testimony he said that he knew of three Atlantic stations in his territory and didn't know whether or not there were any more stations. Now to question him on some unknown quantity of stations that the witness hasn't identified I submit isn't proper.

Hearing Examiner Kolb: He said he sold three Atlantic stations.

Mr. Mason: And he said also that he didn't know how many other stations there were in his territory or whether there were any other stations in his territory.

3669 Mr. Kelaher: I don't mind saying to show you the irregularity of procedure we are following, a few minutes ago counsel for Goodyear were cross-examining this witness. Now they are objecting to my cross-examination.

Mr. Mason: Any party to a proceeding may object to an answer which may be prejudicial in a record. I don't know why my objection can't be heard.

Mr. Kelaher: You are playing both sides.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. We'll leave it. You were calling on three and there were more Atlantic stations in your area.

Mr. Mason: I submit that is a misstatement of his testimony.

Mr. Kelaher: I can ask him.

Mr. Mason: Ask him. Don't state.

Hearing Examiner Kolb: He can answer the question.

The Witness: I was calling on three Atlantic stations and how many more Atlantic stations were in my territory, there wasn't any great quantity. There might have been three more or six more, but there were not thirty-five more.

By Mr. Kelaher:

Q. But there were more, that's the point.

Now, on direct examination you estimated that 3670 there were about 160 supply points in the New England Region, the Pennsylvania-New Jersey Region and the New York Regions of Atlantic. Do you recall that testimony?

A. I think I—

Mr. Ballard: As a matter of fact, what happened was that you—

The Witness: My estimation.

By Mr. Kelaher:

Q. Possibly 160; which was the stipulated figure, that's all I'm saying.

Now, of that number you testified that there were close to 90 to 100 in the New England Region. Do you recall that testimony?

A. Yes, sir; I think that is what I said.

Q. Do you know how many there were in the Pennsylvania-New Jersey Region and in the New York Region?

A. Well, to my best recollection the Philadelphia-New Jersey Region which comprised our Philadelphia and Newark Districts—may I ask this, what year are we talking about?

Q. I'm talking about the figures you were quoting, you were quoting a figure from 90 to 100 in the New England Region, what year were you talking about?

A. I would say that in the Philadelphia-New Jersey Region there were approximately 25 and in the New York

Region there would have been the balance or I would estimate that around 45 to 50.

Q. And what period are we talking about here?

A. That is 1953 and '54.

Q. 1953 and what?

A. '53 and '54.

Q. I may have misunderstood your testimony but I was under the impression that this constituted the current number of supplying dealers, was that your testimony?

A. I don't know what the current number is.

Mr. Ballard: Mr. Kelaher, it wasn't intended to be, that wasn't the question asked. The man hasn't been there since 1957.

Hearing Examiner Kolb: He's giving you the time, he's giving you 1953 to '54, the number of stations.

The Witness: Fifty-three, '54 and '55, it never changed much.

Mr. Kelaher: All right.

By Mr. Kelaher:

Q. You got into a discussion in your testimony concerning developments by Goodyear in tires if you will recall. Isn't it a fact that other tire companies at or about the same time also came out with similar developments; for example, you referred to the use of nylon as one of the Goodyear firsts, is that right?

3672 Mr. Mason: I object to the form of this question.

It is at least two questions, and I would like to have it directly clear what question counsel intends the witness to address his answer to. The very last statement he made or the whole question.

Mr. Kelaher: I think he understands.

Mr. Mason: I would like to have the question reread.  
(The reporter read the pending question.)

Hearing Examiner Kolb: The objection is overruled.

The Witness: Nylon in the industry to my information is attributed; the first commercial use of nylon in tires was a Goodyear.

By Mr. Kelaher:

Q. Now, isn't it true that shortly after that other tire companies came out with nylon tires?

A. Yes, it is true the leading brands, Firestone, Goodrich, U. S., and General.

Q. And possibly others?

A. The time difference would be longer when we get out of that category. There would be a greater length of time.

Q. And isn't the same thing true of any other development or improvement in tires by Goodyear?

A. Well, there are certain things, of course, such as the captive air principle which nobody has to this date, 3673 and we have had it on the market now two years.

Nobody has duplicated that same principle to date.

Q. Well, do other companies have something similar but on a different principle? Is that what you mean?

A. No, as to my knowledge there is only one other concern that makes a tire that has a two chamber concept, and that is Firestone. It is called the Firestone Supreme.

Q. Isn't it true, as a general proposition, that any changes in the tire industry are generally industry-wide over a short period of time?

A. Could you just give me a little closer definition as to changes?

Q. Well, improvements. You mentioned nylon. You mentioned captive air tires. You say there is only one other in that. But ~~a~~ general proposition, aren't most changes in the tire industry, whether innovated by Goodyear or Firestone or U. S. or Goodrich, don't they become a matter of industry technique?

A. On some occasions, but generally speaking, some of the things that Goodyear does or Firestone, or any of the other leading manufacturers, sometimes are not followed immediately by anybody else, such as our tread design. I mean, people don't copy our tread design. We don't copy anybody else's. I mean, they are our own concept of traction.

Q. Now, you also stated that Goodyear was the first to announce the dry charge battery. Did you make that statement?

3674 A. No, sir, I did not.

Q. Well, then, would you state what you did say in connection with dry charge battery?

Mr. Mason: I submit the record shows what he did say, if counsel has a question. This is not suppose to be a memory test.

By Mr. Kelaher:

Q. All right. On direct examination, according to my notes, you testified that Goodyear announced the dry charge battery. Was that your testimony?

A. That is right. I said that Goodyear announced the dry charge battery.

Q. What did you mean by announced the dry charge battery?

A. That the Goodyear Tire and Rubber Company announced to its dealer trade that we were going to make available the Goodyear dry charge.

Q. You didn't mean to imply that it was the first to announce the dry charge battery?

A. No, sir, Firestone made the first announcement.

Q. As a matter of fact, Goodyear doesn't manufacture batteries?

A. No, sir, we do not; in our own factories, no.

Q. Just to keep the record straight, Goodyear purchases batteries under the Goodyear name, is that what you mean, under the Goodyear brand name from independent manufacturers?

A. Yes, sir.

3675. Q. I am just going to ask you one or two questions on the subject brought up by counsel for respondent Goodyear, but on this question of quality, isn't it a fact that there are many tire manufacturers other than Goodyear who manufacture tires of comparable grade and quality?

A. There are many?

Q. Yes.

A. Mr. Ballard: Would you like to have the answer to the question read? You can always have that privilege.

Mr. Kelaher: Let's say there are other manufacturers.

The Witness: There are other manufacturers of tires that are comparable in quality.

3676 Q. Grade and quality.

Mr. Mason: Let the record show the witness is restating the question.

Mr. Kelaher: I am not having any trouble. I don't know what the problem is.

Mr. Mason: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

A. That there are other companies that have comparable quality.

Hearing Examiner Kolb: That is the question. What is your answer?

The Witness: I would say in my opinion there are some that do approach Goodyear's quality; yes, sir.

By Mr. Kelaher:

Q. You say there are some that do approach Goodyear's quality. Does that apply to Firestone?

A. Yes, sir; it does.

Q. And you say they are not comparable in grade and quality but they just approach Goodyear's quality?

A. From my personal standpoint I would say they approach or equal Goodyear's quality, yes.

Q. Would you say the same thing about U. S., Goodrich, General, and others?

3677 A. Personally, no.

Q. You think that none of those equal Goodyear's grade and quality, is that right?

A. No, sir, I mean that is my personal opinion.

Q. That is strictly your personal opinion?

A. Yes, sir.

Q. Isn't it a fact that other tires also have good public acceptance in certain areas?

A. Good public acceptance?

Q. Yes.

A. Yes, they do.

Q. For example, Lee which is manufactured in the Philadelphia area has good consumer acceptance in Philadelphia, hasn't it, in the Philadelphia area?

A. I don't believe I have ever seen any figures on Lee's acceptance in the Philadelphia area.

Q. It is well known in this area, isn't it?

A. I mean the Lee Tire and Rubber Company is well known here; yes, sir.

Mr. Kelaher: I have nothing further.

*Redirect Examination by Mr. Ballard.*

Q. May I ask a couple of questions?

I think that this is clear on the record, but the three Atlantic service stations you were selling to in the Pittsburgh area outside Pittsburgh, did you continue to sell them after March of 1951?

A. Yes, sir; I did.

Mr. Ballard: May I have one moment's recess?

I have no further questions.

Hearing Examiner Kolb: Off the record.

(Discussion off the record:)

Hearing Examiner Kolb: On the record.

The hearing will be adjourned until 10:00 o'clock tomorrow morning.

3680 Hearing Examiner Kolb: The hearing will be in order.

CHARLES A. WALSH, JR. was called as a witness for the Respondent Atlantic Refining Company and, first having been duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Ballard.*

Q. Would you give the reporter your name and home address?

A. Charles A. Walsh, Jr., 305 Forest Hills Circle, Devon, Pennsylvania.

Q. You are, as I understand it, an employee of the Atlantic Refining Company?

A. That is right.

Q. When did you first join Atlantic?

A. In March of 1939.

Q. And could you give us briefly your history with Atlantic?

A. Yes, I started in the New England area, Providence, Rhode Island, as a service station attendant in 1939. In the latter part of the year I went to Boston as a service station manager, stayed in the Boston area approximately a year and a half, operating as service station manager, dealer trainer, a promotable dealer salesman on the 3681 North Shore area of Boston. I had been returned to Providence as supervisor of training stations and then moved in to the regional office in Providence as a sales promotion clerk. Went into the service in '42, in the Army, was in until '46. When I came out went back to Providence area and operated as a field assistant to the sales promotion manager. From there went to sales supervisor in the Providence district.

Q. What year was that, sir? 1947?

A. That would be '47, that is correct. Then from sales supervisor in Providence went to direct marketing manager which was a staff job for the New England region.

After the sales supervisor's assignment in Providence I was put on the job of direct marketing manager for the New England region with headquarters in—

Q. That would be in 1949?

A. That would be in '49, sir. I stayed on that assignment until January of 1953 when I was assigned to the Springfield district as district manager. I was there for two years and in January of 1955 went to the New Haven district as district manager. I left New Haven in April of 1957 to come here to Philadelphia in my present position which is retail marketing manager for the Atlantic Refining Company.

Q. Now, sir, going back to 1947 when you were sales supervisor in the Providence district did you also at that time work on the model station committee?

3682 A. Yes, sir, I did. There was a committee formed at that time with Mr. Jack Eastlow, Philadelphia regional manager as chairman, to study the type of stations that we were operating, how they were operated, both from the point of view of design, station operation, station bookkeeping methods and so forth, to develop a more modern or more efficient method of doing it.

Q. There have been references in this record to the model AR-50 station. Is that the station that your committee designed?

A. A lot of our work went toward the design of that particular service station.

Q. Has that design been changed since the committee worked on it?

A. Yes, it has been modified from time to time.

Mr. Kelaher: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. During the period 1949 to 1953 I believe you said that you were direct marketing manager for New England region?

A. That is correct, sir.

Q. Is that a line position or staff position?

A. That is a staff position.

Q. What is the basic function of a direct marketing manager?

A. Primarily the basic function is the development of the retail phase of the business, the service station phase of Atlantic's operation through promotional activity, sales development programs, and to some extent dealer training. Dealer-employee training in the basic services.

Q. I call to your attention that during that tour of duty Atlantic changed from the direct sale of Lee tires and Exide batteries and so forth to the sponsoring of Goodyear tires, batteries and accessories. As a staff man were you particularly concerned with the mechanics of that change-over?

A. No, I was not, sir.

Q. I believe you stated that in January of 1953 you became manager of the Springfield district?

A. That is correct.

Q. What is the approximate territory covered by that district?

A. Geographically!

Q. Yes.

A. From the Vermont border, the New York border and the Connecticut border on the western end of the State of Massachusetts to about Athol or Barre which is really about the western half of the state, not quite a half of the state.

3684 Q. Athol would be A-t-h-o-l!

A. That is right.

Q. And Barre?

A. B-a-r-r-e.

Q. Basically, it covers the western half of Massachusetts?

A. That is correct, sir.

Q. Do you recall about how many Atlantic dealers there were in that district?

A. At that time there were in the neighborhood of 90, 95 dealers.

Q. And about how many of them were lessee dealers?

A. Between 55 and 60 I would say, sir.

Q. Do you recall a dealer named Israel Gloth?

A. Yes, sir.

Q. Do you remember Mr. Gloth's advertising of his non-sponsored TBA products?

A. Yes, I do. Israel Gloth is a long-time Atlantic dealer in the Springfield district whom I knew quite well. There were occasions when I made calls on Gloth's station when he showed me both Pennsylvania's advertising and proposed advertising that he planned to run in the papers to get my opinion of whether I thought it had appeal.

Q. That would include non-Goodyear items?

A. Yes, sir.

Q. Now, in your experience have other Atlantic 3685 lessee dealers used the cooperative advertising of non-sponsored TBA products?

A. Yes, sir; they have, sir.

Mr. Kelaher: I object unless we get some definition of what is meant by cooperative advertising.

By Mr. Ballard:

Q. Would you explain to Mr. Kelaher what cooperative advertising is?

A. Well, cooperative advertising is generally, sir, where

the dealer would pay part of it and the supplier would pay part of the cost, bear the cost of, say, a newspaper ad.

Q. But the supplier would, for instance, Firestone would be a typical supplier?

A. Yes, Firestone would be.

Q. Now, again it is my recollection that in January of 1955 you became manager of the New Haven district?

A. That is correct, sir.

Q. Could you give us the approximate location or territory of the New Haven district?

A. Well, it would be approximately the southeastern third—the southwestern third of the State of Connecticut going from the coastline, running from the New York line to New London and then it goes north into the interior around Danbury on the west and then comes down fairly narrow down through Old Lyme, Wallingford, Yalesville, section.

3686 Q. About how many Atlantic dealers were there in that district?

A. There were about 135, approximately, at that time.

Q. How many would be lessee dealers?

A. Approximately a hundred.

Q. Now, your present post is manager of the retail marketing division?

A. That is correct, sir.

Q. What is your responsibility in this position?

A. Well, it is once again a staff assignment and my responsibility is, broadly speaking, the development of our retail marketing business which is primarily concerned with the development of service station business.

Q. Considering the New England region as a whole there are, of course, other oil companies besides Atlantic marketing in that region?

A. Yes, sir.

Q. Could you name the principal ones for us?

A. Well, Socony, Esso, Gulf, Sun, Tidewater, Texas, Richfield, American.

Q. Does Shell operate there?

A. Shell operates in New England.

Q. How about Cities Service?

A. Cities Service also.

Q. Calso?

3687 A. Calso is in New England.

Q. Are there also some lesser known or local brands?

A. Yes, there are some. An example of a lesser known national brand would be Crown Central that operates in a small part of New England. Then there are many private brand operators in the New England area, such as Quincy Oil in the Boston market, Merritt, Save Way. There are many, many others that operate just two or three stations, independents.

Q. In general, do these companies operate largely through lessee dealers?

A. Yes, particularly the greater number of the majors that I talked about originally.

Q. Is there competition between the companies in attracting qualified dealers?

A. Very definitely, sir.

3688 Q. In your experience, can a successful dealer get a lease from almost anyone of these companies?

A. Yes, successful good dealers are very definitely in demand in the industry today, and there is no question in my mind but what a well-qualified, proven dealer not only can get a lease from any supplier but is quite often solicited to change from his present brand to some other supplier.

Mr. Kelaher: I object to this testimony concerning the solicitation by other companies of any dealers unless he has more specific information.

Hearing Examiner Kolb: I think he testified as to the general fact. I will overrule the objection.

By Mr. Ballard:

Q. Mr. Walsh, can a successful contract dealer also change his supplier?

A. Yes, he can, sir.

Q. Speaking now, confining yourself to the New England region, is Atlantic able to compete on even terms with the other oil companies in attracting dealers?

Mr. Kelaher: Objection to that question. That is speculative.

Mr. Ballard: That is what the man does all the time. He has just testified to it, that there is constant competition, and I am now asking him what his competitive situation is with respect to other oil companies.

3689 Mr. Kelaher: You asked him if they compete on even terms. I say it is speculative.

Hearing Examiner Kolb: I think he can testify what he does to compete with the other companies. I will sustain the objection as far as the question in its present form.

By Mr. Kelaher:

Q. Mr. Walsh, are other oil companies better known to the public in New England than Atlantic?

Mr. Kelaher: Objection, your Honor. I don't think he can speak for the general public.

Mr. Ballard: Your Honor—

Hearing Examiner Kolb (interposing): Objection overruled.

By Mr. Ballard:

Q. You may answer the question, Mr. Walsh.

A. In my opinion, sir, there are other oil companies in the New England area that have greater acceptance and are better known to the public than Atlantic.

Q. Does the fact that they are better known and have greater acceptance make it easier for them to attract lessee dealers?

Mr. Kelaher: I object to that question, your Honor.

Hearing Examiner Kolb: Overruled.

The Witness: In my opinion, sir, it does make it easier for them to secure quality dealers.

3690 By Mr. Ballard:

Q. What does Atlantic do to counteract that competitive advantage?

A. Well, we attempt to counteract any competitive advantage through acceptance by, first of all, providing a complete program for any prospective dealers which would involve such things as modern stations, training programs, and complete stock and supply program.

Q. Does that include TBA?

A. Yes, it would, sir.

Q. Now, sir, turning for a minute to Atlantic as a whole, its over-all operations, do you know how many stations Atlantic has—that is, lessee stations—has built since World War II, approximately?

A. I can give you a figure for the last—from '48 to the present '58.

Q. For the last ten years.

A. In the last ten years we have contracted approximately 1300 service stations in our whole market.

Q. And have you in addition reconstructed or remodeled some?

A. Yes, we have, sir, approximately 285 have been remodeled.

Q. And I assume that some stations have been decommissioned?

A. That is correct, approximately 500.

Q. I believe it is stipulated that the approximate cost,

investment per service station is \$50,000. Is that 3691 in accordance with your recollection?

A. Yes, it is.

Q. Now, Mr. Walsh, for the record, although I am sure it is not news to anybody here, where is Atlantic's principal office?

A. In Philadelphia, Pennsylvania.

Q. And where is its largest refinery?

A. In Philadelphia, Pennsylvania.

Q. Do you know about how many employees it has in this city?

A. In the metropolitan area of Philadelphia it is my understanding that there are approximately 7500 employees, Atlantic employees.

Q. Do you know approximately how many dollars of service station products and services they buy in your Philadelphia suburban district?

3694 By Mr. Ballard:

Q. Now, Mr. Walsh, do some Atlantic employees leave Atlantic's employ and take up the operation of Atlantic service stations?

A. Yes, sir, there have been a number of them.

Q. Do you know what percentage of the lessees in the Philadelphia suburban district are former Atlantic employees?

A. Yes, sir, approximately 25 percent.

Mr. Kelaher: Is that the Philadelphia suburban district?

Mr. Ballard: Yes, sir. I have been trying to make that very definite, Mr. Kelaher.

By Mr. Ballard:

Q. I take it that a substantial number of Atlantic's directors live in Philadelphia?

A. Yes, sir.

Q. And its officers?

A. Yes, sir.

Q. Now, Mr. Walsh, returning to the New England region, and specifically to the districts where you were district manager, was it a part of the procedure for 3695 the Atlantic franchise to be explained to new dealers and dealer prospects by the Atlantic salesmen and sales supervisor?

A. Yes, very definitely. The Atlantic franchise was provided for the purpose of giving an overall picture to any prospect by the salesman, first of all, as to what the company had to offer as well as what the particular location that he was interested in had to offer. The salesman, after coming to his conclusion that the man was worthwhile talking to or considering seriously as a prospect, would bring him to the sales supervisor and at that time the whole program would be once again reviewed.

Q. When you were district manager, did you try to see dealer prospects as well?

A. Yes, sir, as many as possible.

Q. Did the discussions with these dealer prospects include an outline of the TBA program?

A. Yes.

Q. And did they include a statement of Atlantic's TBA policy?

A. Yes, it did. I would like to say that in reference to that that it would usually be handled by the salesman and the sales supervisor. In my own particular instance, I would not always go into the TBA program in detail other than to ask in my interview with the prospect, whether it happened, whether he was aware of what was available.

Q. As district manager, were you satisfied that your salesmen and sales supervisors were properly explaining it?

A. Yes, I was.

Q. Mr. Walsh, does Atlantic have an interest in the business success of its dealers?

A. Very definitely.

Q. Would you elaborate that a little bit?

A. Well, first of all, as I stated earlier good dealers are difficult to find. When a company has a good dealer, it is of vital interest to them that that man be successful for fairly obvious reasons. First of all, because the success of the dealer and his growth affects very definitely Atlantic's growth. The second thing is the replacement of dealers in service stations is an extremely expensive proposition. Our new dealers are trained and to send them through a training program will cost anywhere from \$750 to \$800 per man. In addition to that, when they are put in their service station, we assign what we call a retail specialist to work with them for a period of up to two weeks. That man is there to help him get set up, to help train his employees in proper drive-way service, and so forth, and that involves an expense of somewhere, oh, between \$200 and \$300.

And then, of course, in the case of losing a dealer, there is a tremendous amount of time and obvious expense on the salesman's part looking for a good replacement.

Those two factors, the growth of our sales volume that we, as sales people, are particularly interested in, plus the cost of replacement are two real important reasons why we are very much interested in the success of the dealer.

Q. When a dealer is replaced, is there a loss of gallonage at the station as a result of that?

A. In most instances, yes, because a well-established dealer has his own personality, he has developed his own following, people would like to do business with him. If he goes out of the service station, the new man has to

establish that liaison all over again. Particularly if the first dealer goes out and takes another station somewhere in the neighborhood, that makes it just that much more difficult.

Q. I take it, however, that regardless of your efforts, some dealers do become dissatisfied and want to leave their station?

A. That is correct, sir.

Q. Is it Atlantic's policy to hold the dealers to the term of his lease in such cases?

A. No, sir, what we hope will happen is that the dealer will stay there long enough for us to find a replacement for him, frankly, but if he doesn't want to we sign a mutual cancellation with him and he vacates the station prior to the expiration of his lease, in all instances that I know of.

Q. In your experience, are these terminations generally on a mutual basis?

A. Yes.

Q. Do you recall any case in which Atlantic terminated a dealer's lease when the dealer did not wish to leave 3698 the station?

A. Yes, I had one instance, talking of a personal instance, where a dealer did not particularly want to leave the station in Springfield and he did leave because his housekeeping and maintenance of his station didn't come anywhere near our standards. He had been talked to and he made no improvement and he went out of the station as a result of that.

Q. Is that the only experience of that kind?

A. That is the only experience of personal knowledge that I have.

Q. Did TBA have any part in that incident?

A. Definitely not.

Q. When a dealer leaves a station, what generally happens to his inventory of TBA?

A. Depending on its condition. If his TBA inventory is in salable condition, generally speaking, the incoming dealer will buy those articles, items from the outgoing dealer at the price that the outgoing dealer paid for them.

Q. Is that true regardless of the brand of the items?

A. Yes.

Q. Now, Atlantic has a so-called long-term dealer lease policy, is that not correct?

A. That is correct, sir.

Q. Has that been reduced to writing?

3699 A. Yes, sir, it has.

Mr. Ballard: Will you mark this R-A-31-A through -E.

(Whereupon, the documents referred to were marked Respondent (Atlantic) Exhibit 31-A through 31-F for identification.)

By Mr. Ballard:

Q. Now, Mr. Walsh, I show you this document marked R-A-31-A through -F, and ask you is that Atlantic's long-term dealer lease policy (handing document to the witness)?

A. Yes, sir, it is.

Q. Now, is this policy in effect today?

A. Yes, it is.

Q. Do you recall the date when it was first adopted?

A. Not the exact date, but it was in 1953.

Q. I call your attention to the fact that it skips from Attachment 1 to Attachment 3. As I understand it—we will lead the witness now with your permission, Mr. Kelaher—Attachment No. 2 was the B3191 lease form. Is that correct, according to your recollection?

A. Yes, it is.

Mr. Kelaher: If you don't know, that is already in evidence, is it not?

Mr. Ballard: Yes, it is the form of B3191.

By Mr. Ballard:

Q. Now, referring for a moment to page B of this 3700 exhibit, which is Attachment No. 1, that appears to be a form of letter to be sent to Atlantic dealers. Is my understanding correct?

A. That is what its purpose is.

Q. Was that letter, in fact, sent to dealers by Atlantic or its regions?

A. Yes, I know specifically of two instances where it was sent to dealers at the regional level.

Q. In other words, two regions?

A. Yes.

Q. Attachment No. 3 is the so-called 11-point lease letter. Is it Atlantic's practice to give the letter containing those 11 points to each lessee?

A. Yes, it is.

Q. Attachment No. 4 is a proposed reporting procedure to be used—well, it is a proposed reporting procedure. Is that procedure being followed and carried out in Atlantic today?

A. Yes, it is.

Q. And has it been at all times since the policy was adopted?

A. To the best of my knowledge, it has.

Q. Now, Mr. Walsh, turning to the subject of station inspection programs. Would you describe briefly the various kinds of inspections that are made of Atlantic service stations?

A. Yes. There are formal inspections, to use that word, made at the regional level and at headquarters level by

what we call a shopper program. The shopper would 3701 be an employee that is not known to the dealer, drives in to the service station in a regular automobile, receives service at the pump island, looks the station over from an appearance point of view, and checks the rest-rooms for maintenance of supplies and standards of cleanliness. He then, still without identifying himself, if possible, to the dealer leaves the station and scores the results of that inspection on a form that he is provided.

The results of those inspections are forwarded to the region office, thence to the district, and then to the salesman to discuss with the dealer.

Q. Do those inspection forms contain a place to show the brand of TBA that the dealer happens to be handling?

A. They do not, sir.

Q. In your experience, do the reports, regardless of whether there is a place on the form, do the reports themselves show that information?

A. No, sir.

Q. Mr. Walsh, is the Atlantic credit card available for use by a dealer regardless of the TBA brand he handles?

A. Yes, it is.

Q. Are loans and station improvements also available regardless of the TBA brand he handles?

A. That is correct.

Q. Is it an object of your dealer program to develop a friendly relationship between your dealers and their Atlantic salesmen?

3702 A. Very definitely.

Q. Do you think you have been successful in obtaining that object?

A. Largely I believe we have.

Q. Mr. Walsh, do you recall the approximate number of Goodyear supply points who were serving Atlantic dealers in the Springfield district and the New Haven district when you were there?

A. The approximate number of Goodyear supply points?

Q. Yes.

A. Well, I will have to guess now.

Q. Would it refresh your recollection if I suggested that it was about a dozen in each district?

A. I was going to say something a little less than that.

Q. What were you going to say?

A. I was going to say around seven or eight.

Q. In each district?

A. Yes.

Mr. Kelaher: Is this at the time he was in those areas?

Mr. Ballard: Yes. Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

3703 By Mr. Ballard:

Q. In addition to those supply points, were there other TBA suppliers calling on your dealers?

A. Yes, there were.

Q. You recall the approximate number of other TBA suppliers in the Springfield district?

A. It would be somewhere in the neighborhood of eight or nine, maybe ten.

Q. In the New Haven district?

A. More than that, around 15, 13 to 15.

Q. And from your knowledge of the New England region, are there other TBA suppliers than Goodyear calling on Atlantic dealers?

A. That is right.

Q. That would be true throughout the region?

A. Yes, sir.

Q. Could you give us a description of the kinds of businesses that these suppliers are engaged in, general classification?

A. Oh, as a general classification, most of these people are automotive supply points that have carried the business beyond the supply of just automotive parts and have gone into accessories, some of them to carry batteries, and some of them have a short line of tires.

Q. By a short line you mean—

A. (Interposing.) Not a full stock and not cover-  
3704 age all the way across the board.

Q. In your experience and observation, do Atlantic dealers make purchases from these other suppliers?

A. Yes, sir, they do.

Q. And do they display outwardly the things they purchase from them?

A. That is right.

Mr. Kelaher: I object. He is talking about his personal knowledge. I think it should be qualified to that extent.

By Mr. Ballard:

Q. Do the answers you have just given apply to the New England region?

A. Yes, sir, they do.

Q. Do you know of any Atlantic dealer why buys TBA exclusively through his Goodyear supply point?

Mr. Kelaher: Objection, your Honor. There is no qualification to this question either.

Hearing Examiner Kolb: If he knows any dealer that does buy, I think it is all right.

Mr. Ballard: I think you can guess the answer.

Hearing Examiner Kolb: I will overrule the objection.

By Mr. Ballard:

Q. You may answer, Mr. Walsh.

A. To my knowledge, I don't know of any Atlantic 3705 dealer that buys everything through the Goodyear supply point, TBA.

Q. Now, in your experience, and needless to say that includes the New England region—I will limit my question to the New England region—does the success of the Good-year supply points in selling to Atlantic dealers vary from one supply point to another?

A. Very definitely. In fact, that is one of the key reasons why some are eminently successful and others are not. The dealer will buy, our dealers, any dealer will buy from a supply point that can give him quick service that carries an adequate stock of all the things that he can resell through his station so they don't have to back order, that is competitive on pricing, and that very definitely will give him this quick service that he is looking for.

Another thing, another factor that enters into it is a question of credit, of the credit limits that are offered to a dealer and the credit payment arrangements. If a supply point can satisfy the dealers on all of those things that I have just mentioned, they will do very well. I personally know of some that have done extremely well because of that.

Q. If they fail to measure up in those terms, do they not do so well?

A. In my opinion, they don't do as well as they could because the dealer just will try them once or twice and if they can't satisfy the needs, he goes elsewhere.

3706 Mr. Kelaher: I object, and move to strike unless he specifies the dealers.

Hearing Examiner Kolb: The objection will be overruled.

3707 By Mr. Ballard:

Q. Mr. Walsh, in your view is it necessary for Atlantic to supply a TBA program for its dealers?

A. Yes, I feel very strongly that we must provide a TBA program for our dealers.

Q. Would you expand a little on the reasons for that?

A. I would be happy to.

First of all, a man that is going into a service station business, it is not just a business now of selling gasoline and motor oil and lubricating a car. The customers are getting more and more used to getting one-stop service. That includes having your TBA items available at the location. The good dealers know this. The better dealers capitalize on this to try to keep their customer close to them at all times. People that are going into the business who are going to take over a service station would expect a supplier to have a complete program, that is the training, the modern facilities and your supply that I mentioned earlier, that there be a complete package for him. We must have that in order to have a dealer successful and have ourselves successful.

Q. Do you feel that you cannot rely on local distributors to supply these needs to your dealers?

A. In my opinion I don't believe we can rely on the local distributors because some of them do not carry 3708 a full line, some of them are not aware of the dealer's finances, the pattern of operation; they don't know him well enough to be able to advise him on proper stock levels to keep, and so forth. They might get him a little heavy on one thing and it is going to take him a long while to move. And a dealer today works on turnover, that is how the successful businessman operates. It is not how much he has got in stock, it is how rapidly he turns it over and the guidance and the proper balanced TBA program will determine how rapidly his turnover is and how much profit he makes.

Q. Now, sir, Atlantic has a so-called extra compensation plan, does it not, for promotable dealer salesmen?

A. It does.

Q. I believe that went into effect April 1, 1956?

A. Yes, sir.

Q. I recognize I am leading the witness, Mr. Kelaher. I will stop when I get past these introductory questions.

Do you know taking the year of 1957 how many promotable dealer salesmen were eligible to participate in that plan?

Mr. Kelaher: In what region?

By Mr. Ballard:

Q. In Atlantic in the company?

Mr. Kelaher: In the company as a whole?

Mr. Ballard: Yes, sir.

Mr. Kelaher: Are you talking about the six marketing regions?

Mr. Ballard: Yes, Atlantic.

Mr. Kelaher: Just so we get the areas specified. Go ahead.

Mr. Ballard: Yes, sir.

The Witness: In the entire company as a whole, 138 promotable dealer men participated.

By Mr. Ballard:

Q. And do you know what the total compensation paid to them for all services and products was?

A. Total dollar volume?

Q. Yes.

A. It was in excess of \$23,000.

Q. Do you know what the payments on account of TBA gains were?

A. Forty-eight hundred-odd—forty-eight hundred ninety or ninety-nine dollars, somewhere in that neighborhood.

Q. That is company-wide?

A. Yes, sir, this is company-wide.

Q. Mr. Walsh, in setting the percentages under its new percentage leases and in setting the per gallon charges

under the older leases, what was Atlantic's aim and policy in fixing those amounts?

A. Well, on setting the method or rate of paying rent we were primarily interested in two things, first of all keeping it fair so that it would not be an excessive rental from a dealer's point of view, and at the same time be at a level where we could attempt to recover our cost of investment in the—

Q. Over the years have your rents equalled or exceeded or fallen short of your costs in operating the program?

Mr. Kelaher: Your Honor, I am going to object to this line of inquiry. I think the records are the best evidence as to whether or not the rate of their return has exceeded, been the same or been lower than their investments in their stations.

Mr. Ballard: This man is a policy-making man of Atlantic, your Honor. He knows the answer.

Mr. Kelaher: He asked a very general question which isn't limited to any specific year or month, any specific region, and I think it is not the best evidence.

Hearing Examiner Kolb: Read the question, please.

(Question read.)

Mr. Ballard: I am not asking for figures, your Honor, I am simply asking whether the relationship—

Hearing Examiner Kolb: I will overrule the objection. The witness may answer.

A. In general our rental return has fallen somewhat short of our rent paid out.

### 3711 By Mr. Ballard:

Q. By your rent paid out you mean what?

A. That is, rent paid out would mean that amount of money paid to lessors in the instance where we lease properties, it covers taxes, and it would cover depreciation, also maintenance and what improvements might be made on the property.

Q. And we are speaking now of the stations that Atlantic leases to lessee dealers?

A. That is correct, sir.

Q. Now, in operating its TBA program does Atlantic aim for any particular portion of the total TBA purchases of its dealers?

A. No, sir, they do not.

Q. Does Atlantic keep statistics showing the portion of the total TBA purchases of its dealers represented by sponsored TBA?

A. No, they do not.

Q. Does Atlantic—you do, I assume—attempt to increase your sales of sponsored TBA to your dealers each year?

A. Very definitely, that is one of the reasons that I exist and a number of other people in the company exist; like any sales force we are trying to increase our sales to and through our dealers in all products which would include TBA.

3712 Q. In operating the program do you aim to recover the cost of operation of the TBA program from your TBA commissions?

A. We hope for that, yes.

Q. Do you keep a running account of the cost and the commissions?

A. No, sir, we don't.

By Mr. Ballard:

Q. Now, Mr. Walsh, comparing the year 1952 with the year 1957 has there been an increase in the number of Atlantic lessee dealers? I am speaking company-wide now?

A. Yes, there has been; approximately 24 percent increases.

Mr. Kelaher: Your Honor, we have stipulated figures

showing specific numbers of lessee dealers from 1951 through 1956, I think.

Mr. Ballard: I am asking him '52-'57, Mr. Kelaher. You will find that the figures will go along with this. I am certainly entitled to ask these questions of the witness.

Do you have a motion?

3713 Mr. Kelaher: I am trying to save you some time. We already stipulated what the figures are.

Mr. Ballard: You have already consumed more time than my next three questions.

Mr. Kelaher: You go ahead.

By Mr. Ballard:

Q. During the same five-year period have gasoline sales per lessee dealer increased?

A. Yes, sir, approximately 20 percent.

Q. Now, making adjustment for price increases during that period amounting to 25 percent on tires, zero percent on batteries, and 15 percent on accessories—

Mr. Kelaher: I—you go ahead and ask the question, I am going to object.

By Mr. Ballard:

Q. (Continuing.) —after making those adjustments has a calculation been made to show the increase in sponsored TBA purchases per lessee dealer?

Mr. Kelaher: I object.

Mr. Ballard: He can answer.

Mr. Kelaher: I object because he—I have a right to object before he answers.

Mr. Ballard: I asked him if a calculation has been made.

Mr. Kelaher: I have a right to object before he answers. He is premising his answer on a proposed or purported set of figures which this witness has not testified to. He didn't ask this witness what the ratios

were of increases.' No foundation has been laid for the question.

Mr. Mason: The foundation is already in the record.

Mr. Ballard: It was laid yesterday, Mr. Kelaher, I don't know whether you recall it or not, but Mr. Shafer testified those were the amounts.

Mr. Kelaher: He said some off the cuff increases.

Mr. Mason: I would like to speak to counsel's remark about they were off the cuff observations in the record. This particular question that came up in Mr. Shafer's question was the subject of argument, objection, and your Honor permitted the answer. I think the term "off the cuff answer" is a thoroughly improper statement of counsel in this record.

Mr. Kelaher: I would like to remind counsel yesterday you were cross-examining Mr. Shafer. Now today you are defending Mr. Shafer. I don't know where you stand with respect to Mr. Shafer.

Mr. Mason: All of Mr. Shafer's testimony will be thoroughly grounded.

Hearing Examiner Kolb: Objection overruled.

3715 Mr. Ballard: Has such a calculation been made, sir?

The Witness: To my knowledge it has been.

By Mr. Ballard:

Q. What did it show?

A. It showed that sponsored TBA sales have increased from '52 to '57 of approximately 12 percent.

Q. That is after making allowances for the price changes!

Mr. Kelaher: I move to strike his testimony. I don't think a proper basis has been laid for any such computation.

Mr. Ballard: Before your Honor rules may I say this:

Mr. Shafer of course, did give us these figures yesterday. I am prepared if your Honor wishes to have the witness testify as to what efforts he has made or have been made to check these figures, if your Honor feels that that would assist in his ruling.

Mr. Kelaher: Your Honor, there are many, many studies made by the government, by private individuals, showing instances in prices and there are variations between those prices and those price differentials. You have various types of indices to show these things. Now, we are entitled to know the basis for the computation being made by counsel. This is a very unique way of attempting 3716 to show this particular type of problem.

Mr. Ballard: Your Honor, may I suggest that if Mr. Kelaher feels that these are not the right figures he has the opportunity on rebuttal. He has the opportunity on cross-examination. His arguments, it seems to me, go to the weight and not admissibility. I should think your Honor would be interested in how much these sales have gone up.

Hearing Examiner Kolb: General information, that is one thing. If it means you are going to place a certain argument on the fact that the figure was 12 percent and not 13 percent or something of that sort then I say you haven't laid a basis for it.

Mr. Ballard: No, I will state to your Honor that the purpose of this testimony is to show that the increase in purchases of sponsored TBA over this five-year period has been in line with and not exceeded the increase in gallonage per dealer. It seems to me that those two are interesting and important information in the case and that your Honor is entitled to have them.

Hearing Examiner Kolb: I will let the answer stand.

Mr. Kelaher: Your Honor, I would like it to be—I want to hear no arguments at the conclusion of this case based

on cost of living increases other than as stated by counsel.

3717 Mr. Ballard: Now, Your Honor, I hope you are not going to foreclose me from any argument at this time. I may have foreclosed myself.

Mr. Kelaher: Unless it is specifically limited.

Hearing Examiner Kolb: I know what this testimony is worth on the basis of how it is given, so we will go on from there.

Mr. Ballard: Cross-examine.

Hearing Examiner Kolb: We will take a recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

Mr. Ballard: Your Honor, before cross-examination begins I would like to offer Exhibit RA-31-A through F in evidence.

Mr. Kelaher: No objection.

Hearing Examiner Kolb: The document will be received in evidence as Respondent's Exhibit A31-A through F.

(The document heretofore marked RESPONDENT AT-LANTIC'S EXHIBIT 31-A through F for identification was received in evidence.)

*Cross-Examination by Mr. Kelaher.*

Q. Mr. Walsh, you gave some testimony concerning your work on a model station committee. Do you recall that testimony?

A. Yes, sir, I did.

Q. And at that time you were sales supervisor in the Providence district, is that correct?

A. That is correct, sir, that was the title.

Q. And what was the objective of the model station program?

A. Well, primarily, sir, to develop more complete and efficient methods of marketing through service stations by looking at our station design, that is the physical layout, the physical equipment, to determine a simple and efficient method for the dealer to take care of his accounting records so that he would know where he stood, to investigate such things as lighting, display techniques, display cabinets, display shelving and things like that within the station.

Q. Did the appearance of the station enter into your work?

A. Yes, I would say it would.

Q. By that would you explain that?

A. Well, by the appearance it would be. We were looking for some simple means of making the housekeeping chores easier for the dealer such as design and placement of drains and things like that. Over-all appearance, of course, we had already adopted the porcelain enamel front for our stations but there was some more development along those lines.

Q. Did your color scheme enter into your work, too, or had that been pretty well set?

A. No, sir, that had been fairly well established.

Q. Would it be fair to say that you were striving for a degree of uniformity among your outlets with respect to the appearance?

A. Not so far as this particular committee was concerned, because that had been somewhat established beforehand with the adoption of the red, white, and blue porcelain enamel.

Q. So, from Atlantic's standpoint it is to its advantage to have uniformity among its stations, is it not, insofar as appearance is concerned?

A. From the point of view of customer recognition, I would say Yes.

Q. And that is an important part of service station

operations, is it not, among all service stations, among all companies?

A. The idea of uniformity.

Q. The idea of being easily recognizable from the color standpoint as the customer approaches it?

A. Well, I am not so sure it would be color as much as it would be insignia, frankly.

Q. For example, Shell has yellow and red, for example; Atlantic has the red and the white and the blue?

3720 A. Yes.

Q. And other stations have other designs?

A. Yes, just to expand for a moment on it sir, there are a number of major companies, of course, that have not duplicating but similar color schemes, so that the thing you work on would be the insignia.

Q. But the thing from the Atlantic standpoint is to fix in the consumer's mind what an Atlantic station looks like so that when he approaches it he will know it is an Atlantic station and if he wants Atlantic it will be easily recognizable?

A. That is correct.

Q. And that has advertising value, does it not?

A. To a limited degree I would say it does.

Q. Persons interested in Atlantic products would certainly be attracted by the insignia?

A. Yes.

Q. At that time in your work on the model station committee, did you get into service station identification?

A. No, I don't believe we did, sir.

Q. At that time—excuse me, were you finished?

A. I am trying to think to give you a complete answer.

No. I am quite sure we didn't get into that.

Q. Was that pretty well established at that time, too?

A. Yes, I think it was. We had already established 3721 the what we call the 56 sign, the Atlantic sign at the curb, the red, white and blue porcelain.

Q. With respect to TBA was that pretty well established, with respect to Lee, Exide, at that time?

A. I would say that from the point of view of the material being in the station, the point of sale material, yes, that was pretty well established.

Q. I am talking about window valances and outdoor signs, too?

A. Yes.

Q. That was well established at that time?

A. Yes.

Q. Isn't it true that after that time, after 1951, when Atlantic began to sponsor the Goodyear TBA program that the service station identification program of Atlantic was changed to include the Goodyear TBA window valances and Goodyear outdoor pole signs in Atlantic stations?

A. That is right.

Q. That is correct, isn't it?

A. Yes.

Q. And that would be true also of the Firestone TBA program in the three marketing regions in which Atlantic sponsored Firestone TBA, isn't that correct?

A. At the time that you are talking about I had no contact with the Firestone region, sir; I presume that 3722 that would be true.

Q. It is true today, is it not?

A. Yes, it is.

Q. During your direct testimony you gave us an estimate of the number of lessee stations in the Springfield district when you were district manager. The remainder, of course, were contract stations?

A. Yes.

Q. Now, just to refresh on the figures, was 95 Atlantic dealers, of this number 55 to 60 were lessee dealers; that would leave approximately 35 as contract dealers?

A. About, yes, I believe.

Q. Of that number how many were so-called real service stations? That is service stations handling TBA?

A. I would say about, oh, 24 to 27, in that neighborhood.

Q. They were complete service stations?

A. They would be what we refer to as stations with facilities.

Q. They were promotable dealers, would you call them?

A. Not necessarily what you would call a promotable dealer. They would have service facilities so that they could lubricate, wash, do other service work. I know the actual differentiation, sir, the ones that we haven't accounted for at this point would be the grocery-store operations where they just have a pump out in front.

3723 Q. With respect to the New Haven district the contract dealers there approximated 35 according to your figures. Of that number how many would be real or complete service stations similar to a lessee dealer station?

A. I would say about the same number. I am guessing at this point, but we have very few in New Haven that didn't have facilities.

Q. Do you mean that the number you referred to, 24 or 27 in each district carried TBA, sold TBA, or were they garages and things of that type?

A. Well, some would be garages, most of them, however, I would say, I am going back now, dredging a little, would be what you would call a service station outlet.

3724 Q. You testified on direct examination that there were other oil companies in the New England region having greater acceptance than Atlantic. Do you recall that testimony?

A. Yes, sir, I do.

Q. Isn't it true that there were also other oil companies with lesser acceptance than Atlantic?

A. Yes, sir.

Q: Actually, Atlantic is one of the majors in the New England region, is it not?

A. Yes, it would be classified as a major.

Q. So, it is easier for Atlantic to secure dealers than some of the oil companies with lesser acceptance in New England region, is it not?

A. Yes, I would agree to that. It is a question of relativity there.

Q. Now, you outlined the procedure for interviewing dealer prospects. As I recall your testimony, you stated that your TBA policy was explained at various levels, is that correct, in interviewing a dealer prospect?

A. Yes, it is explained at various levels, not necessarily according to a formal procedure; in other words, it doesn't necessarily mean that the salesman explains it, then the supervisor explains it, and then the district manager explains it in every instance. But during this interviewing process, the TBA program is explained.

3725 Q. The salesman makes it known initially to the dealer prospect that Atlantic in that region is sponsoring the Goodyear TBA program; is that correct?

A. Yes, he would.

Q. And that is repeated by the sales supervisor and then by the district manager at times?

A. In some instances.

Q. And then, when the dealer prospect goes to a training school, do you have a dealer training school in the New England region?

A. Yes, sir, we do.

Q. And at that time Atlantic's sponsorship of Goodyear TBA is again called to the dealer applicant's attention, isn't it?

A. That is correct.

Q. As I understand your testimony, you personally have

interviewed dealer applicants and discussed TBA with them?

A. Yes, sir, I have.

Q. Have you called their attention to the fact that Good-year TBA or that other Atlantic dealers sell Goodyear TBA in the region?

A. I could well have. I don't remember having done it either omitted it or not. Ordinarily, sir, let me explain my answer to you a little bit.

Ordinarily, when we are talking to a prospect we talk about the need to have a balanced program in his station and usually the question of where, how does he get it, where does it come from what does he need, comes up in the course of these interviews and discussions. In many instances, the conversation would revolve around the supply point that he could talk to that would be closest to his particular service station.

Q. Are you referring to the Goodyear supply point?

A. That would be a Goodyear supply point.

Q. And you, as a selling point, make it known to him that other Atlantic stations in the region carry the Good-year service station identification?

A. I think—no, I can't think of an instance where I did do that. I have talked, I am sure, however, of the Goodyear program as such, that is, indirectly.

Q. And haven't you talked of the Atlantic-Goodyear program as such?

A. Yes, I am sure I must have. I can't remember a specific instance but I am sure I must have in covering the whole program.

Q. In other words, haven't you told the dealer in one form or another, directly or indirectly, that Atlantic and Goodyear are identified together in the New England region?

A. Yes.

Q. Now, with respect to the initial stock you just  
3727 mentioned, how do you normally handle that? Do  
you normally have the Goodyear salesman call on  
the dealer at the time he opens the station, or do you have  
the Goodyear TBA stock in the station when he opens, if  
it is a new station?

A. We are talking about a new station?

Q. Yes.

A. In the case of a new station, ordinarily our Atlantic  
salesman goes over the stock requirements of everything,  
going from gasoline through motor oil, TBA, equipment,  
supplies, everything else, and it depends, obviously, on  
the amount of finances that are available as to the stock  
level. The stock itself ordinarily when the dealer goes  
into a new service station he will have been to the supply  
point—

Q. (Interposing.) The Goodyear supply point?

A. Most likely the Goodyear supply point, yes, with  
the salesman. He would have been through our warehouse,  
of course, where our particular gear is, and then at the  
time that he moves in to the service station, there would  
be on that day, but not necessarily the day of opening, but  
the day when he actually goes in the materials according  
to what he has decided, he and the salesman have worked  
up this basic inventory list, that material would start  
being delivered during that day.

Q. Are you including in your answer Goodyear TBA?

A. Yes, sir, I am.

3728 Q. Now, do you require the dealer to invest any  
money in his station? Isn't a minimum investment  
required for a new Atlantic dealer?

A. Yes, the dealer has to make something.

Q. What is it in the New England region?

A. The minimum investment in the New England region  
is a thousand dollars.

Q. Isn't that the minimum in all of Atlantic's regions at this time?

A. Yes, it is.

Q. And at times do you loan money to new dealers, incoming dealers?

A. Yes, we do.

Q. And can that loan be in the form of stock of various types, gasoline, petroleum, Goodyear TBA, etc.? How does that operate?

A. Well, we finance the dealer through a regular financing program approved by our credit department for "X" number of dollars, and that money would be utilized to purchase stock.

Q. That would include Goodyear TBA?

A. It could very well include Goodyear TBA.

Q. Isn't Atlantic's primary concern with its lessee dealers to obtain a reasonable return on its investment in its lessee stations? Isn't that Atlantic's primary interest in the operation of its lessee stations?

A. I would like, if I may—

Q. (Interposing.) You can answer Yes or No, and then amplify if you want.

A. The answer is Yes. Now, if I may, I would like to amplify that.

Q. Sure, go right ahead.

A. We obviously, like any corporation, are in business to make a profit; however, the way that we are attempting one of the jobs that I am trying to do is get the return on that investment through the increase in business that goes through those stations.

Q. So, from Atlantic's standpoint it is to your advantage to weed out the unprofitable dealers, is it not?

A. Yes.

Q. Yes?

A. Yes.<sup>12</sup> What happens, sir, is that usually the unprofitable dealers weed out themselves. It is not necessarily a policing action through Atlantic.

Q. But if the need arises it becomes a policing action, does it not?

A. It could become a policing action, yes.

Q. I am going to refer you to RX-A-31-B and call your attention to the second paragraph of this long-term dealer lessee letter, as I understand it, which goes to each 3730 lessee dealer; is that right?

A. Yes, sir.

Q. "You know without being told that each Atlantic station which is well run helps all your fellow dealers operating Atlantic stations, and we also know what the 'dogs' do for us."

Now, by "dogs" are you referring to these unprofitable dealers?

A. No, sir. By "dogs", and I am going to have to give you a liberal interpretation of this because the phrase is not my own, we are talking, sir, about dealers who operate stations, whether profitable or unprofitable who hurt Atlantic's reputation, who hurt their own reputation, and make it distasteful for someone that trades with them to try another well-operated service station, and that, sir, has really nothing to do with whether it is profitable or unprofitable.

Q. Are you referring by the use of the term "dogs" to Atlantic dealers who do not conform to Atlantic's policies?

A. Definitely not, sir. What we are talking about—it is not a question I don't believe here of policy, Mr. Kelaher; it is a question of treatment of customers.

Q. When you become aware, in your opinion or in Atlantic's opinion, of the so-called "dog", don't you attempt to weed it out from your organization?

A. First of all—

Q. (Interposing.) You can answer Yes or No, 3731 and then you may amplify if you care to.

A. Yes, I would say we would. And the amplification that I would like to put on that, without going into too much detail, is the first thing that we are trying to do obviously with many of these stations is to correct them for the reason that I gave in direct testimony of the tremendous amount of money that is involved every time you make a change over. If correction is impossible, they are alienating customers, they are alienating the public, and they are hurting both their own reputation and our own.

Q. That, of course, is represented by the investment of the dealer in his own particular station, is it not?

A. Yes.

Q. Now, you also referred to the fact that dealers build up a good business and then leave Atlantic. Do you recall that testimony?

A. Yes.

Q. Is it fair to say what you are referring to is goodwill built up by the service station operator, personal goodwill?

A. Yes.

Q. You also referred to one instance of the termination of a dealer's lease, and you referred to a Springfield dealer. What was the name of the Springfield dealer?

A. The name of the Springfield dealer was Fennessey Brothers, and I don't think, I can't remember and 3732 I didn't go into it in too great a depth, I don't believe it was a lease cancellation, I believe it was a mutual cancellation in that particular instance.

Q. Isn't it true that the Fennessey Brothers built up the gallonage in their station tremendously?

A. No, sir, they did not.

Q. Isn't it true that they increased the gallonage in their station from the time they took it over until the time they left?

A. As I remember, sir, the Fennessey Brothers, the two brothers were doing about 11,000 gallons at the time they left. I am drawing strictly on my memory.

Q. Do you have any records available?

A. Not with me, sir, no. And they could have increased it from, say, somewhere around 7,000 or something like that, but I wouldn't call it a tremendous increase in gallonage.

Q. Well, it is a fact, is it not, that they increased it from the gallonage of the former dealer at that station?

A. I truthfully can't tell you that until I check it.

Q. Were you in that region at that time? You were in the Springfield region at that time?

A. I was in the Springfield region at that time.

Q. Isn't it true that the prior dealer's gallonage was low and the station wasn't being operated profitably?

A. Right at this point I can't tell you who the 3733 prior dealer was.

Q. Isn't it true that from time to time that Atlantic attempted to sell the Fennessey Brothers more stock than they required at their station?

A. Not to my knowledge.

Q. Do you have any—who was your salesman at that time?

A. His name was Parker.

Q. Now, with respect to your inspection program, you are referring to the phantom customer inspection program; is that right?

A. Yes.

Q. Now, I would like you to run your attention to the number of TBA suppliers other than Goodyear supply points in the Springfield district. I understood you to

say, and my notes may be incorrect, but I understood you to say there were only eight or nine or ten that were suppliers of TBA in that district; is that right?

A. That I know were calling on our particular accounts.

Q. Are you referring to the metropolitan Springfield alone or are you referring—

A. (Interposing.) I am not talking of the whole district. I am talking primarily of the metropolitan Springfield area.

Q. I assume that you weren't referring to the wholesale district because I think there were many more suppliers than that in the Springfield district, aren't there?

3734 A. There could well be.

Q. Then, when you were referring to about 15 in New Haven, were you just referring to the New Haven metropolitan area?

A. That is right.

Q. And there are many more TBA suppliers of one form or another in the New Haven district, are there not?

A. I would imagine that there would certainly be more than 15.

Q. And both in the Springfield district and the New Haven district, all these suppliers may call on Atlantic stations?

A. It could well be, yes.

Q. Isn't it a fact that Atlantic dealers in the New England Region buy substantial quantities of TBA from Goodyear supply points?

A. The words "substantial" is the only thing that throws me off.

Q. You can answer Yes or No unless you have difficulty with the word.

Mr. Ballard: He is trying to understand your question, Mr. Kelaher.

The Witness: What do you mean by "substantial," sir?

By Mr. Kelaher:

Q. You stated on direct examination that no Atlantic dealer buys all of its TBA from Goodyear. Now, I am asking you isn't it a fact—

3735 Mr. Ballard (Interposing.) I hate to object. That isn't exactly a correct characterization of his statement, Mr. Kelaher.

Mr. Kelaher: Mr. Examiner, my notes may be incorrect, but I have it down here in black and white that he said no Atlantic dealer buys all of his TBA from Goodyear.

Mr. Ballard: I think it was confined to the dealers that he knew, as I think you may have omitted in your notes.

By Mr. Kelaher:

Q. Well, isn't it a fact that Atlantic dealers in the New England region purchase, buy substantial, I mean, relatively large quantities of Goodyear TBA from Good-year supply points?

A. I would say Yes.

Q. You gave testimony with respect to your reasons why you believe, if I understand your testimony, Atlantic dealers are better off buying Goodyear TBA through the Atlantic arrangement than from local distributors. Do you remember that testimony?

Mr. Ballard. I object to that characterization, your Honor. I am sorry, I do not like to interrupt Mr. Kelaher's examination, but I don't think that that is a fair characterization.

Mr. Kelaher: Let's ask the witness wasn't that the substance of your testimony.

The Witness: Would you repeat your interpretation again?

3736 Hearing Examiner Kolb: You are only asking him about what he said before.

Mr. Kelaher: I will strike the question then.

By Mr. Kelaher:

Q. Didn't you say on direct examination that among other things local distributors might tend to over-stock Atlantic dealers?

A. No, sir, I don't believe I said that. I said on direct examination that local distributors may not be in a position to know, first, the finances of the dealer, second, of all the needs for the particular location, and, third, be acquainted with balance that is required in order to get rapid turn-over of stock, and that as a result it was possible, not necessarily deliberate, but it would be possible for them to have the dealer invest moneys in some articles that did not have a rapid turn-over.

By Mr. Kelaher:

Q. Now, were you implying that all of the local 3737 TBA distributors in all of Atlantic marketing regions might not properly be equipped to conduct profitable business relationships with Atlantic dealers?

Mr. Mason: May I have the question reread?

(The reporter read the pending question.)

The Witness: The answer to that one is No. I make no such implication.

By Mr. Kelaher:

Q. In other words, you are not saying that there are not TBA distributors who have the interest of the Atlantic dealers just as much at heart as Goodyear in that group?

A. I am saying that there are TBA distributors who do have the—who could well have the dealer's interest at heart. I am not saying that they don't.

Q. On that same point do you think that it is necessary for all Atlantic dealers to have the Atlantic Refining Company tell them how to run their TBA business?

A. I can answer that one Yes or No?

Q. Yes or No.

Mr. Mason: I submit there is no rule of order to require the witness to give a Yes or No answer.

Mr. Ballard: I think we had better have that question reread. Could I have the question read again?

Hearing Examiner Kolb: Read the question.

(The reporter read the question commencing at line 15 of this page.)

3738 The Witness: The answer is No. It is not necessary for all Atlantic dealers to have the Atlantic Refining Company tell them how to run their TBA business. May I expand a little on that?

Mr. Kelaher: You have expanded enough on that.

Mr. Mason: He is entitled to finish his answer.

Hearing Examiner Kolb: He is entitled to finish his answer.

The Witness: I would like to say, it is only fair to say, with a new dealer, inexperienced in the business, I don't know why he should look beyond the Atlantic salesman whom he knows the best.

The other thing I would like to say, the longer a dealer is in business and the more successful that he is in that business, the better he does on it, the less he has to look to Atlantic for his guidance because he has the use of his own good judgment.

By Mr. Kelaher:

Q. Your answer then on this point, in response to direct testimony, was limited to new dealers; do I understand you to mean that now?

Mr. Kelaher: I am not having any trouble with the witness. I don't see why I have to be interrupted every two minutes.

Mr. Ballard: Well, Mr. Kelaher—

3739 Mr. Kelaher: (Interposing) If that is not the case, he can say so, can't he?

Mr. Ballard: Mr. Kelaher, I don't think it is fair for you to misquote the witness and rely on his memory to correct you. He assumes you are trying to quote him correctly and so do I.

Mr. Kelaher: I made it very clear I am trying to interpret from the past notes what he said. If anything I say is not correct, he can correct it.

Mr. Ballard: There is a verbatim reporter, if you want to quote back to him, that is what she is here for.

Mr. Mason: Counsel proceeds by characterizing the testimony, and in many instances it is wholly unnecessary to proceed with the facts without trying to go back to the record or give his truncated characterization of the record.

Mr. Kelaher: I would like to say I am working under great pressure. I could have asked for deferred cross a week from now. I am attempting to expedite these proceedings instead of delaying them.

Mr. Mason: That doesn't excuse improper questions.

Mr. Ballard: If there isn't an objection to the question, I now make one, your Honor.

Hearing Examiner Kolb: What is the question?

Mr. Ballard: I don't know what the question is, your Honor, but I do recall it was objectionable.

3740 Hearing Examiner Kolb: Read the question.

(The reporter read the question commencing at line 19 on page 3738 of the record.)

Mr. Ballard: I object on the ground this question improperly characterizes the prior testimony, when it says "Your answer then on this point," in that I do not recall any point or any such answer to which he can be referred.

Hearing Examiner Kolb: Well, I think it really amounts to arguing with the witness with what he said before without going into the facts we are trying to get to here, and I think on that ground this line of examination is improper. It may not be improper, but it certainly doesn't elicit any information.

Mr. Kelaher: As I understand the witness, you have testified that you think it is better for Atlantic dealers to deal with the Goodyear supply point than with local distributors. Am I right or wrong? Was that what you said? Is that your position?

The Witness: No, I don't think it was my position.

By Mr. Kelaher:

Q. What is your position, that is what I would like to know?

A. Let me try to reclarify it. I don't need to go back to the previous testimony. I don't believe I answered this one.

There are three classes of dealers really, or three types of dealers at stations: the new dealer who is looking 3741 for guidance and we think that it is Atlantic's responsibility and obligation to guide him as he goes into this station within the limits that he will accept that guidance; the second one is the dealer who is well established, knows his business, is doing an excellent job, and we also think that we should keep him aware of what our sponsored TBA program is and he accepts and rejects that part of it that he wants.

I don't think that I made any statement, sir, that it should be restricted solely to new dealers or that it should be forced testimony that it would be just on old dealers.

Q. In your direct examination you specifically said that dealers can't rely on local dealers. I can go back to the record and show it to you. We can stay here the rest of the day.

Mr. Ballard: Go ahead and find it for us, please.

Hearing Examiner Kolb: The record is gone.

Mr. Ballard: Off the record I will tell you what he did say.

Mr. Kelaher: No, you won't. I will tell you what he did say. I have it right here.

Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

3742 Hearing Examiner Kolb: On the record.

Mr. Kelaher: Let me ask it this way, then:

By Mr. Kelaher:

Q. Do you think Atlantic dealers can rely on local distributors of TBA for their supplies?

A. In practically all instances I guess I would say yes, they could rely on them. I am talking about the Atlantic dealers now.

Q. Do you think that Atlantic dealers can rely on local distributors to give them advice as to proper stock levels?

A. I would like to—I can answer that one Yes. I would like to qualify it, however, and say under certain circumstances they can. I don't think that—

Q. What do you mean by under certain circumstances?

A. All right, I think that a local supplier who is aware of the type of business that is done through the outlet, the volumes that have been done historically through the outlet, the type of neighborhood and so forth that this fellow was servicing, with that knowledge and with a competent man that he has on his payroll, would be in a position to give him proper advice as to stock levels and kinds of stock. That is why I say in certain instances.

Q. Do you think that all local distributors would tend to offer stock to Atlantic dealers?

A. No, sir.

3743 Mr. Ballard: I submit this is repetitious, your Honor.

By Mr. Kelaher:

Q. In fact, isn't it to Atlantic's financial advantage to have dealers sell TBA regardless of brand under its present leasing arrangement?

A. Well, I will say Yes, and then say what do you mean, sir, by financial advantage?

Q. Well, it is included in rental computation, is it not, the sales of all TBA by Atlantic lessee dealers, regardless of brand, are included in the computation of the rent he pays Atlantic, is that correct?

A. For those stations that are on a percentage lease, yes.

Q. Yes.

Let me ask you this: Does rental return fall short of rental paid out with respect to Atlantic lessee stations?

A. May I just explore that. I am not trying to be difficult, sir, I just want to make sure that we understand on rental paid out.

Q. That is what I am getting at. You testified to rental paid out on direct, but inasmuch as I can't mention it I am going at it this way. What do you mean by rental paid out?

Hearing Examiner Kolb: I think the witness did explain what he meant by rental paid out. Everything including amortization of the property.

3744 Mr. Ballard: Mr. Kelaher wants him to say it again, I believe.

Mr. Kelaher: Yes.

The Witness: I will be happy to. Rental paid out in my interpretation of it includes that rent that is paid to a lessor, individual or corporation from whom we rent premises, plus taxes, plus depreciation on buildings that we own or properties that we own, plus maintenance and improvements. That is rental paid out. Rental return, of course, is rent collected from those.

By Mr. Kelaher:

Q. Now, with respect to rental paid out, are you referring to a lease, rental lease type of situation?

A. Well, partially. Yes. A rental paid out we have two

classifications of stations where we are putting them in, those that we own and those we lease. I am talking about where an individual owns a service station, a completed service station, we lease it from him at a monthly figure which we have to pay in the form of rent. That is rent paid out in that part of it.

Q. Now, is your answer limited to that type of station, that is what I am getting at?

A. No, sir; it isn't. The over-all rental incorporates both those stations we own and those stations that we lease and did in my original answer.

3745 Q. Well, included in rent paid out what stations you own? Where you own land and you own the station, what do you mean when you talk about rent paid out?

A. Well, that would be our cost.

Q. Cost of what?

A. The monthly cost for having that particular piece of property.

Q. What is in the cost?

A. Well, taxes, depreciation, maintenance on the owned properties.

Q. There is no rent involved at all, is there?

A. Not as rent payable to ourselves, No.

Q. Nor as rent paid to another party?

A. No, not on owned property.

Q. Are you saying and correct me if I misunderstand your testimony, but is it fair to say that the rental income from Atlantic lessee stations does not compensate Atlantic for the operation of the stations?

A. This is all types of stations, owned and leased?

Q. The type we are talking about, lessee stations?

A. Yes, that is correct.

Q. In other words, are you testifying that Atlantic operates these stations at a loss?

A. From a rent paid out or from a cost versus rent return is concerned, yes.

3746 Q. Is there any income from the operation of lessee stations by Atlantic? Any gross income or net income?

A. I am afraid I don't understand exactly what you are talking about.

Q. As I understand your testimony you are saying that Atlantic operates all the lessee stations at a loss?

Hearing Examiner Kolb: Mr. Kelaher, you are dragging into this question now the question of profitable sale of gasoline, aren't you?

Mr. Ballard: I think he is trying to confuse the witness.

Hearing Examiner Kolb: I think the witness has very definitely testified he is talking about the rent that the dealer pays and the expense which the company is put to in operating or owning that station.

Mr. Kelaher: I am simply trying to show that there is a profit in the operation of a station, I don't know why he can't just say that.

Hearing Examiner Kolb: He is talking about the income from the rent and the outgo on the expense of owning the station.

Mr. Kelaher: I know what he is talking about.

Hearing Examiner Kolb: You put in there the question on the profit on the sale of gasoline which wasn't in the picture at all until this moment.

3747 Mr. Kelaher: I have a right to do that.

Hearing Examiner Kolb: Do it so the witness knows what you are doing.

Mr. Kelaher: I was attempting to be fair with the whole situation. From an over-all standpoint doesn't Atlantic operate its lessee stations at a profit?

A. I would say so, yes; over the long pull.

By Mr. Kelaher:

Q. Now, you were asked if Atlantic keeps a record of the sales of non-sponsored TBA by Atlantic lessee dealers. Do you recall that?

Mr. Ballard: I don't believe I asked exactly that question, Mr. Kelaher. Can't you do it without characterizing it?

By Mr. Kelaher:

Q. ~~Let~~ me ask you this: Do you keep a record of the sale of non-sponsored TBA by Atlantic lessee dealers?

A. No, sir.

Q. Or contract dealers as far as that goes?

A. No, sir.

Q. You say "No, sir"?

A. Yes.

Q. Now, with respect to lessee dealers who are operating under the percentage arrangement you do know the total amount of TBA sold by each lessee dealer, do you not?

3748 A. If they report it on their rental statement then we know what they report on their rental statement.

Q. You know what their total amount of TBA sales are for that particular rental period, isn't that true?

A. Right.

Q. And isn't it also true that Atlantic knows the specific amount of Goodyear TBA sold by each lessee station?

A. Not necessarily because the dealer that buys Goodyear products may buy them through certain convenient supply points in his particular area. He may buy them someplace else.

Q. I am talking about the sales through the supply points.

A. Through the supply points, yes.

Q. He knows specifically how much he buys under the commission plan program?

A. That is right.

Q. So you can tell by subtracting one from the other, if these, what the approximate amount of non-sponsored TBA is?

A. I think it could be determined. It would be extremely difficult. It is possible to be determined.

3749 Mr. Kelaher: I said just tell me why it is so difficult.

A. It depends on whether we are talking about an annual or monthly basis, in many instances a dealer would buy something and not sell it; he might buy sponsored or non-sponsored items in the month of November, that may not sell during the month of November, it might not show up on the rent statement for a period of two or three months.

By Mr. Kelaher:

Q. You certainly would have a fair approximation of his sponsored TBA sales?

A. It could be determined; yes, sir. We could get a fair approximation.

Mr. Kelaher: No further questions.

*Redirect Examination by Mr. Ballard.*

Q. Mr. Walsh, turning to this line of questioning that we have just gone through: When Atlantic receives re-  
3750 ports from Goodyear of sales of sponsored TBA through Goodyear supply points to Atlantic dealers do those reports speak in terms of the dealer's buying price? The actual price paid by the dealer?

A. I am sorry to say that I can't answer that one. I

am afraid that Mr. Mulholland would be more familiar with that than I am.

Q. When Atlantic receives rental reports from its dealers do they speak in terms of the dealer's actual sales, selling price received by the dealer?

A. It is retail sales value in total, yes.

Q. Now I ask you again, reconsidering your previous answer, does the report from the Goodyear supply point speak of the retail sales value or the wholesale sales value?

A. To my knowledge it is the wholesale sales value.

Q. So they are different values?

A. So they are different levels; that is correct, sir.

Q. Now, sir, I believe you said that a comparison could be made between them; it would be difficult but it could be made; is that a correct characterization of your statement?

A. In my opinion I think it could be made.

Q. Now I ask you does Atlantic routinely make such comparisons?

A. No, sir, they do not.

3751 Q. Referring to the matter of dealer's good will:

In your experience is it possible to transfer the good will, personal good will of the dealer from the outgoing dealer to the incoming dealer?

A. I have never seen it done successfully.

Mr. Ballard: I don't think I have any further questions. In fact, I have no further questions.

Hearing Examiner Kolb: That is all, Mr. Walsh.

(Witness excused.)

Hearing Examiner Kolb: We will adjourn until 2:00 p.m.

(Thereupon, at 12:40 o'clock p.m., the hearing was recessed, to reconvene at 2:00 o'clock p.m., this same date.)

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## Afternoon Session.

(2:00 p. m.)

Hearing Examiner Kolb: The hearing will be in order.

RICHARD G. MULHOLLAND was called as a witness on behalf of The Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Ballard.*

Q. Mr. Mulholland, have you given your name and address to the reporter?

A. Richard G. Mulholland, 45 Server Lane, Springfield, Pennsylvania.

Q. When did you join the Atlantic Refining Company, Mr. Mulholland?

A. I joined Atlantic in 1938, February.

Q. And what was your occupation previous to that time?

A. After graduating from Warton School, I went immediately with Procter and Gamble Distributing Company in a training program where we were all supposed to be executives in ten years, and they started me in the advertising department with advertising crews, ringing door bells, and distributing coupons, and I graduated to dealer selling work, which quickly enfolded into handling the very large stores in Philadelphia and on through 3753 until I became office head salesman.

Q. Now, sir, I gather that after eight years of this ten year stint, you joined Atlantic; is that correct?

A. That is right. I resigned and joined Atlantic.

Q. In what capacity did you join Atlantic, sir?

A. As a dealer-salesman in York, Pennsylvania.

Q. That was 1938?

A. Yes, sir.

Q. And then, can you give us briefly your history with Atlantic since that time?

A. I moved to Allentown, Pennsylvania, as dealer-salesman, but with the understanding I would be the assistance district manager when that job cleared in 1942, and then in 1945, I was actually appointed assistant district manager. That, by the way, was the first district in Atlantic where they used this assistant district manager, outgrew this sales supervisor program.

Then, in 1949, I went in to the regional sales staff as direct marketing manager.

Q. That would be the eastern Pennsylvania region?

A. The eastern Pennsylvania region, which is the biggest region of the company in size and volume.

Q. And after being direct marketing supervisor for the eastern Pennsylvania region, what was your next assignment?

A. Then, I was made temporary sales manager of 3754 the region. It was to have been a year's basis where the incumbent sales manager was involved in this big company training program as training director, and I no more than got well started in that work than I was quickly brought into the Atlantic training program as a member of the top faculty with the job of developing a means of training Atlantic salesmen to sell at the wholesale level.

Q. In other words, to sell the Atlantic dealers?

A. To dealers.

Mr. Kelaher: I wonder if I could have the date when you became temporary sales manager as we go along.

By Mr. Ballard:

Q. Was that 1951; is that correct?

A. It was early in '51. On March 15, 1951, I pretty

well was pulled away from that work and went into Philadelphia at the Barclay Hotel where we spent the better part of a year in this big training program.

Q. What was your next job after that?

A. After that, in 1952, August, I was appointed in the present job as TBA section manager, they called it at that time, and now it is called, I believe, TBA—

Q. (Interposing.) Wasn't it previously TBA supervisor?

A. Supervisor. Now it is called TBA section manager.

Q. Now, as TBA section manager, who do you report to?

A. I now report to C. A. Walsh, Jr.

3755 Q. That is the gentleman that testified here this morning?

A. Yes, sir.

Q. Just so we get his position, who does he report to? I didn't ask him that.

A. He is manager of the retail marketing division, and he reports to Mr. H. H. Ingersoll, who is assistant sales manager of the domestic marketing department.

Q. And then, does Mr. Ingersoll report to Mr. Colley?

A. He reports to Mr. Colley.

Q. Now, there are, are there not, regional TBA coordinators?

A. Yes, there are six regional TBA coordinators, one in each region.

Q. Do they report to you or to the region?

A. They liaison with me, but they report and are directly responsible to the sales manager of the region, or in some cases report to the direct marketing manager of the region.

Q. They keep you informed of what they are doing?

A. Very much so. We work together and they are my entree to the region basically in furthering the dissemination of TBA information and all the things that I do from my office, although we do, of course, use the facility of

discussing TBA with regional managers, sales manager, and other personnel in the regions, too.

They are the staff men in the region who do nothing but work on TBA.

3756 Q. Is your job also a staff job?

A. Yes, it is.

Q. Now, in your job, what is your primary duty?

A. Well, primarily my job is to disseminate, after editing, all TBA information to the region. The tire company programs that come to me, and we disseminate the information to the coordinators in the regions with this benediction, so to speak: the coordinators spread it in the regional sales group. Also, my job is to be original and creative in developing TBA slants and touches on this program and big contributions, too, that we want to engage in in our own way aside from the tire company developed program.

Q. Now, in the course of your duties, do you have contact with the TBA suppliers?

A. That is another important function. My job is to maintain close personal contact with the upper level management people of Firestone and Goodyear with their field district managers and division managers, and just know the people, not only in the tire companies that we deal with, but within the whole fraternity of the TBA industry.

Q. By that, who do you include in this fraternity?

A. Well, we have TBA managers from all the other oil companies who we all cultivate acquaintance with each other. We meet together on councils in the TBA group and know what is going on by our contacts with each other.

3757 Then, there is another group that I have carefully cultivated as a responsibility, that is, the management people of the sub-suppliers, such as DuPont, AC, Johnson's Wax, Simonize, and all the other people who supply important automotive accessories to the tire companies who, in turn, supply our set-up.

Q. Do your activities include field trips?

A. Very definitely. I am charged with getting off the office seat and being out in the regions with the people. One great responsibility is to know of the problems and to work at them and assist the coordinators and other people in improving all situations, such as supply and delivery, competitiveness of wholesale pricing, and the myriad things that come up.

Q. As part of your duties, do you check on the implementation of Atlantic's no-forcing policy?

A. I don't directly go out to seek any information, but I have my ear to the ground; and in my contacts with dealers who I stop in to see occasionally at meetings and what not, and with the coordinators contact and other sales people, I surely would hear about it if there were any dealer unhappiness in that direction.

Q. Have you ever received complaints from dealers about forcing—being forced or coerced in the course of these trips?

A. No, sir, I have not.

Q. Is it part of your job to know what programs 3758 are being offered by TBA suppliers other than Good-year and Firestone?

A. Yes, my office function is to receive visitors calling on Atlantic because of their TBA interest, which would include a lot of people. People I can recall—the vice-president of the Cooper Tire Company came in to solicit our interest in their tire; Mansfield Tire and Rubber Company call every six months to keep contact on the possibility we might want to have an Atlantic private label tire; Auto-lite, Electric Auto-lite people call regularly.

Oh, there are others.

3759 Q. Armstrong tires?

A. Armstrong's general manager called once. Gould-National batteries, some were solicited in a mild

way by interested manufacturers of TBA products, we already are in intimate contact with a lot of the people like the AC group, DuPont and others, that have known us for many years.

Q. Now, sir, you mentioned the TBA officials of other oil companies. To your knowledge do the other oil companies competing with Atlantic offer TBA programs to their dealers?

A. They most certainly do. I understand there is no oil company, major oil company in the United States, that doesn't have a TBA program today.

Q. Now, going back to 1950 at which time as I recall it you were direct marketing supervisor for the Eastern Pennsylvania region, is that correct, in 1950 now?

A. That is right.

Q. Does that region include Wilmington?

A. It does.

Q. Do you recall that in 1950 the Wilmington district was chosen for a test of the Firestone TBA program?

A. Very definitely, although I had nothing to do, as Mr. Walsh testified, consumer job in New England with the mechanics of setting up such a program in my position, I was well aware of the management's decision to test Firestone TBA distribution in our Wilmington district.

3760 Q. Did you attend the initial meeting down there?

A. I remember that very vividly because—

Q. Would you describe that kickoff meeting briefly to us?

A. The reason I remember it so vividly it was so impressive. Firestone didn't come with a handful of field people around the corner, they came with all the power they had, that was in the person of Mr. Earl Hathaway who is now vice president and general sales manager of the company, Mr. Sharkey who has passed away but was then

a tremendous person as a sales manager out of New York, and they brought with them a guy named Clyde Gischel who was probably the spell-binder of Firestone from dealer talking standpoint or sales meeting talking standpoint, and they put a show on there for our district sales group and I went there to hear it.

They also had their district manager, Mr. Frank Campbell, and the store manager, and the other people who would be involved in the personal mechanics of that local program but what they were there for was to tell us the glories of Firestone and show us the product, the promotional material, and it was a tremendous meeting with people like that that you don't forget.

Q. Would you say it was a sales meeting?

A. It was.

Q. Now, as I understand your testimony at the time that Atlantic went on to sales commission plan company-3761 wide you were no longer in the line organization, is that right?

A. I can recall attending a few of the kickoff dealer meetings. I can recall going to one in Wilkes-Barre, one in Reading, then I just was pulled right out of the picture as it just got under way in the general spreading of the program throughout the region and was pulled in to this training program in Philadelphia where my sole job was to work on this bridge to sale.

Q. Mr. Mulholland, for Mr. Kelaher's benefit let's elucidate.

Mr. Kelaher: I got it, it is b-r-i-d-g-e.

Mr. Ballard: You asked for this.

By Mr. Ballard:

Q. Would you briefly, Mr. Mulholland, describe the bridge to sales program just so we do have it on the record?

A. I am right proud of this. This is 20-some years of

my life in this (laughter) and I can honestly say I wrote every word of it.

Mr. Kelaher: You are not holding up the bridge!

The Witness: I am talking about concept here. I developed this over this many years of sales experience.

Mr. Kelaher: He has just asked you to describe the—

The Witness: All right, it is a mechanical device used in lecture and training school form to show a salesman and teach a salesman the mechanics of selling, of 3762 good selling. It admonishes him to be careful to use the supporting things to a good sale which are his personality, enthusiasm, and what not, the mechanical aids to selling such as his use of pencil and pad and talk over pieces and what not, and how to approach the various types of dealers, dealer personalities that exist.

This isn't just applicable to Atlantic, it is applicable to any wholesale selling and I think one of the—it is recognized as one of the fine, unique methods of making young salesmen see how to sell rather than have a lost philosophy that they flounder around in for twenty years until some finally learn.

Mr. Kelaher: I know you are anxious to talk about it, but in the future I am going to ask that your answer be confined to the question.

Mr. Ballard: Could we go off the record for a minute?

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: Would you mark this as RA Exhibit 32.

(The document referred to was marked Respondent Atlantic's exhibit for identification 32.)

3763 By Mr. Ballard:

Q. Now, Mr. Mulholland, turning to August of 1952 which month I believe, I understand you were appointed

as TBA section manager or section supervisor as it was then called; is that the correct time on that?

A. Yes, sir.

Q. After your appointment as TBA section supervisor what was your first step in your new position?

A. Well, before I could take a step Mr. Colley had me come to a top staff meeting attended by his whole group and some of the regional managers and there, unbeknown to me they began to discuss the fact that Federal Trade Commission investigators had been reported to be talking to Atlantic dealers in some areas, and the discussion quickly led to a resolution on the management's part, particularly Mr. Colley, that he wanted Mulholland to go out to the dealers and talk to the dealers about this thing. It happened that it was an opportune time because we had these football meetings scheduled which covered all of the dealers of the company, or most of them, as part of a petroleum promotion.

So he said, we will have him go following this channel or avenue to the dealers, take part in these meetings and then they drilled into me the things he wanted me to cover, most honestly the big one was right in the beginning to find out if his policy of non-forcing was actually being 3764 followed out in the field.

Mr. Kelaher: Your Honor, I think if we are going to go into a conference that he should be limited to the conversation by Mr. Colley and by the others present.

Mr. Ballard: Mr. Kelaher, if you are not moving to strike the previous answer I intend to move on. Did I take that as a motion to strike or simply an admonition?

Mr. Kelaher: I interrupted him, he hasn't finished, I am sure.

Mr. Ballard: Do you move to strike or is it all right to have it stand?

Mr. Kelaher: I move to strike that portion of the dis-

cussion relating to what transpired at the staff meeting.

Hearing Examiner Kolb: I understood the witness was receiving his instructions that he received from Mr. Colley.

Mr. Ballard: That is what I understood he was giving, your Honor.

Mr. Kelaher: He didn't give the—

Mr. Ballard: Can I clarify that point, Your Honor?

Hearing Examiner Kolb: He did say he was instructed by Colley. Read the answer.

(Answer read.)

Mr. Ballard: I might, your Honor. That is a statement of his instructions, what was said to him.

3765 Mr. Kelaher: If it was a meeting, there were minutes taken; if there was a resolution I submit that would be the best evidence of the meeting.

Mr. Ballard: Your Honor, I submit the man should be able to state what his instructions were that he received from his superior.

Hearing Examiner Kolb: Is this a resolution or an agreement between the parties what you should do?

The Witness: This was an instruction directly by Mr. Colley which resulted from their discussion at the meeting.

Mr. Kelaher Was it in writing?

The Witness: No, it was my boss telling me what to do.

Hearing Examiner Kolb: Objection overruled.

By Mr. Ballard:

Q. Mr. Mulholland, can you tell me approximately how many of these football meetings were held all told throughout the company?

A. Well, there were around forty-five or forty-six.

Q. And how many dealers all told attended those meetings?

A. About 1400.

Q. How many of the meetings did you personally attend?

A. Twenty.

I didn't just attend them, I took a part in them.

3766 Q. At the meetings that you personally attended and took part in could you tell us briefly what you said and did at those meetings and what happened at them?

A. Well, I first introduced myself as the new TBA manager to the dealers and the sales people, and then I explained the purpose of the meeting was to talk openly and directly about the Federal Trade Commission interest in Atlantic's TBA activity. I told everyone and I followed a careful card index so I hit every point in each meeting in the same fashion that if the Federal Commission people came to them for goodness sakes our management wanted it known without obviously, to be totally cooperative, and tell them anything and everything because we had nothing to hide.

Secondly, I reiterated the policy that Mr. Colley had sent out in his non-forcing letters of 1951 and then asked the dealers if anyone among them had found this policy was something we had in the home office and it didn't work that way in the field.

I didn't just ask, I walked in the aisles with these people, these were lively meetings, there was tremendous interest in this thing.

Then thirdly I dwelt heavily on the fact that let's say it all over again that the management won't stand for forcing, so therewith the dealer group and all sales people

present they were told once again that our management wanted the policy to be activated in the field 3767 to the letter of the law, no forcing.

Q. Did you get comments from your dealers on the TBA program?

A. I got a lot of comment but it wasn't on the forcing

angle. I can only recall one dealer who really rose up and said he had been coerced, and that was in Wilmington, Delaware, and he stood right up and said "Yes, I am the guy, I have had my arm twisted." And he even pointed out the salesman, the Atlantic salesman that had done it, he was right there.

Q. For Mr. Kelaher's benefit will you give us the name of the dealer and the name of the Atlantic salesman?

A. I can remember him well because I used to stop there with the sales supervisor, the name was G-r-e-g-g-o.

Q. And could you give us the name of the salesman?

A. The salesman as I recall it was Jim Robinson who is now district manager at Harrisburg.

Q. Was Mr. Gregg the only dealer of those who attended the meetings you were at who made this kind of complaint?

A. Yes, as I said I had a lot of comment because we delve into whether they liked the program or not and whether they were satisfied with the supply and delivery situation, and that really brought the house down because in those early days they weren't satisfied with supply and delivery in many places, it was a new program, the 3768 gears were just beginning to mesh, and we had problems. So, they told us of these problems. It was very helpful.

Q. Now, sir, who gave this presentation at the meetings that you did not attend?

A. Well, it became obvious I couldn't physically keep up with this thing, it was unfolding so fast. I worked day and night at it, so we called in our TBA coordinators to Philadelphia and I told them what I had been doing. I gave them this format of probing these—

Mr. Kelaher: Mr. Examiner, the only question he asked him was who conducted the other meetings. I don't think he has gotten into this question.

3769 By Mr. Ballard:

Q. Mr. Mulholland, did you ascertain to your satisfaction that the instructions you gave to the TBA coordinators with regard to the conducting of these meetings were carried out?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: He can answer Yes or No.

A. Yes.

By Mr. Ballard:

Q. And were you satisfied that your instructions were carried out?

A. I was.

Q. Now, as a result of this program did you reach an over-all conclusion as to whether Atlantic dealers did, in fact, feel free to exercise freedom of choice?

Mr. Kelaher: Objection, your Honor, that is certainly a leading question. I don't think that is entirely objectionable.

Mr. Ballard: Now, your Honor, this man has testified he was sent out into the field.

Mr. Kelaher: You didn't ask him what his general conclusion was, you told him the answer.

Hearing Examiner Kolb: Objection overruled. Let's go ahead.

Mr. Ballard: Would you answer the question?

A. Yes, my total impression was that there was 3770 no dealer complaint about forcing except in this one instance?

By Mr. Ballard:

Q. And did you report this conclusion to your superiors?

A. Yes, sir.

Q. Specifically who did you tell it to?

A. To Dr. Hirschberger to whom I then reported, prod-

uct manager of the company. He took me to Mr. Colley and Mr. Colley talked with me for a half hour about the full happening at these meetings which I reported what he wanted to know, that the policy was being carried out—

Mr. Kelaher: Objection. He is going beyond the scope of the question again. I think we are going to have to have some kind of an understanding.

Hearing Examiner Kolb: It just means a couple more questions to get the same thing. Let's let it go at that. Objection overruled.

Mr. Kelaher: We are going to be here forever.

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Ballard:

Q. Now, Mr. Mulholland, when you took over your responsibilities, I am returning again to this time when you first took over your responsibilities as TBA section 3771 supervisor, what were you instructed that your responsibilities were as manager of that section?

A. Specifically Mr. Colley in starting me off after these football meetings discussed two great areas he wanted me to work in primarily in developing this new program. The first to unceasingly work at bettering the supply and delivery situation so all Atlantic dealers could get material when they wanted it.

And secondly, to do everything possible to see that our dealer bought this material at competitive prices.

Q. Have those been your principal aims since that time?

A. Well, on the one being new, I thought the first thing to do was take a survey of what our people thought about supply points in the field.

Mr. Kelaher: Your Honor, it is obvious that this answer isn't responsive to the question.

Mr. Ballard: All right, I will ask another question, Mr. Kelaher. I will withdraw my previous question and say did you make a survey of the supply points in the field?

A. We did.

By Mr. Ballard:

Q. And—

A. The survey included four categories, the inventory the supply point carried, their attitude or policy on credit extension to the dealer, whether they offered sales assistance with our salesmen in the form of supply point salesmen, and what our people thought of their ability to deliver on time.

Q. And did you find that some supply points did not measure up in these respects?

A. Many, many of them.

Q. What did you do about it when you found that?

A. Then that gave us a target for working at this problem and the coordinators in the regional level worked unceasingly with the petroleum representatives of the tire companies in contacting supply points and our people and following through trying to solve these problems.

I participated when the need developed for a higher level discussion with managers of the tire companies or even Akron. So from the beginning we worked at this; we are still working at it.

Q. Could you describe your activities with respect to prices charged to Atlantic dealers by supply points?

A. Our objective was to have our dealer, be sure our dealer was buying tires basically and first of all at a price where he could retail competitively with bigger tire specialists, or other service station dealers. In our study of this we find that this is true in general, our average dealer buys at 22½ percent off the code price on tires; which is a

discount allowed by the tire company if a dealer 3773 bought direct from them necessitating the dealer doing an annual tire volume of from five to ten thousand dollars a year. So, in most places we found that our dealer is enjoying this level of discount which he really, in many cases, doesn't earn because he in his tire business does less than \$5,000 a year in many, many cases.

Q. On that basis are the prices being charged to your dealers competitive, by the supply points competitive with those being offered by competing suppliers?

A. We think very much so in general, but we find spots where a supply point will only allow a discount of 20 percent and if it is not a matter of very distant delivery cost the tire company people let our people counsel with this fellow and plead the case of our dealer and that work has gone on continually until today I say our Atlantic dealer has a very competitive price and we can pretty well prove to him or to othr salesman that he can compete at the retail level with almost anyone, even the big, huge buyers of Goodyear.

Q. Now, sir, does Atlantic train its own salesmen in the selling of TBA, how to sell TBA?

A. Yes, sir.

Q. Where do they get that training? Now I am speaking of an Atlantic salesman, where does he get his training?

A. Formally he goes into the dealer training 3774 schools not as a trainee but as an observer, all salesmen get that—

Q. Then does he go along to an additional school?

A. Then he goes into Philadelphia after he has been in the field six months or a year, to a product school which I personally teach with the assistance of tire company personnel. And we teach TBA product promotional angles and what they need to know to better sell and service our dealer.

Then this man goes back into the field and he picks up more training as he attends district sales meetings where our TBA coordinator and/or a tire company or outside manufacturer personality will tell them about product and information. He goes to these wonderful tire company meetings, Goodyear put on a tremendous spring meeting, and our people are all invited and they all go and they get this tire company training on the theme of those individual meetings.

3775 Q. Now, there are, I believe you said, dealer clinics and dealer meetings involving sponsored TBA?

A. Clinics?

Q. Clinics and meetings. I am speaking now of the dealer clinics and meetings, are there such things?

A. Yes. We have originated this clinic thing in our company. We feel one of the unending needs is for training dealers, and the first place to train them is on the most important part of the TBA program, tires, so we developed a tire clinic, sell-up-to-profit tire clinic.

Q. How long does that sell-up-to-profit clinic take to put on the full program?

A. Well, it takes two hours. You are lucky if you finish it in two hours.

Q. Was that program developed by Atlantic?

A. Yes, sir.

Q. This script was written by Atlantic?

A. The script was very carefully developed by drawing what our coordinators could give us from a meeting. We had staff men from Akron there, we got everything, we milked every idea we could get from everybody, and we finally got it down and I talked it into records to give it a sales flavor, dealer talk instead of stilted language, and then this thing was written up in the form of a script.

Q. Is this the script? I show you this document.

3776 Is this the script for that sell-up-to-profit?

A. Yes, sir.

Mr. Ballard: May we have that marked A-33 for identification.

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 33 for identification.)

By Mr. Ballard:

Q. I ask you, for the record, is R-A-33 a copy of the script that is used in this sell-up-to-profit tire clinic? Is that what that is?

A. Yes, sir.

Q. Approximately, how often has that clinic been given by Atlantic?

A. The givers were the TBA coordinators teaming up with tire company personnel in their field. My job was to originate this, and having the ball, they gave this thing to dealer groups.

Q. Has it reached a large number of dealers?

A. A large number, yes, sir.

Q. Now, in the course of that TBA clinic, tire clinic, do you also give the dealer a booklet to carry away with him?

A. Yes, sir, a take home book.

Mr. Ballard: Will you mark this RX-A-34 for identification.

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 34 for identification.)

3777 By Mr. Ballard:

Q. I show you a document that has been marked RX-A-34, and ask you if that is a copy of the booklet that is given to the dealer to carry home with him?

A. Yes, sir, it is.

Q. What does this booklet contain?

A. Well, it contains the slap-on development of the talk to the dealer.

Q. In other words, this first sheet is a picture of the chart that you use in talking to the dealer?

A. Of the flannel board after it had all be laid on there.

Then, we gave them some homely down to earth ways that this guy could comfortably talk tires to a customer. Instead of being tongue-tied, we said just tell him what you found or you saw when you looked at their tires. This hesitancy to talk is a dealer problem, new dealers, or ask him questions about his tires in the form of your desire to give service to him to start these tire selling conversations.

Then, we on the next page gave him something to think about which we had talked about in the clinic concerning other things besides the talking of tires that he must do. To look like a tire headquarters place through good display and use of promotional material; for goodness sakes subscribe to this tire company display package that gave him this wealth of material for less than the postage, 3778 sometimes. Set up a tire selling department to maintain a balanced stock and give decent tire service.

Then, to help him with display we had worked these out —this is new in the industry. We deplored the idea of everytime a dealer had to display tires on the driveway, he should own a \$50.00 piece of display equipment; so, we began to work out—and Firestone sales staff worked with us on this. We actually went out in our stations ourselves and piled tires in various interesting arrangements which are placed against the window with only the use of a small tire standard as equipment.

So that the dealer could make his place like a merchant lived here instead of just setting them around along the wall and there are various pictures here which are new thinking, in fact, the tire companies are using this material in their national literature today. We originated that idea.

Then, we put in the book the product story of the Good-year tire, and that was how you talked tires, they gave the dealers a real feel of how you go about selling tires at profit, sell up.

Q. Now, sir—

Mr. Kelaher: (Interposing.) I don't think he has finished yet.

Mr. Ballard: Would you like to have some more testimony?

3779 Mr. Kelaher: I am enjoying this.

The Witness: I went out in two regions because there were some guys that were a little bashful about this job and I talked to a thousand dealers myself with 12 big dealer meetings where we paid the bill and we didn't meet in cellars. We met in hotel ballrooms and we had groups there up to a hundred or more dealers, and all our sales people, and we talked intimately with those people about how to sell tires.

By Mr. Ballard:

Q. Now, Mulholland, if Mr. Kelaher will permit me a question, you have spoken of tires, and I think you stated that they were most important. Do you mean to imply by that that accessories and batteries are not also of importance to the dealer? I wanted to get your meaning straight on that.

A. No, sir, that was just the initial start.

Mr. Ballard: Will you mark this R-A-35 for identification?

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 35 for identification.)

By Mr. Ballard:

Q. Mr. Mulholland, I show you a folder, marked RX-A-35, which I take it from the title is a group of some so-called talk-over pieces; is that correct?

A. Yes, sir. A finally devised talk-over pieces.

Q. Would you explain briefly to Judge how a talk-  
3780 over piece is used? You could perhaps use one of  
these as an example.

A. Well, this first one: in our "bridge to sales" for  
any good salesman he uses mechanical aids to sell to hold  
the attention of his dealer and to particularly make a  
good factual presentation. The two greatest mechanical  
aids to selling ever devised is a lead pencil and a talk-over  
piece, and something to scribble on.

So, this first one here is the talk-over piece, as all of  
these are, devised by Atlantic at our expense and dis-  
tributed to our salesmen who have been trained in the  
"bridge to sales" to use a talk-over piece, and they would  
use it this way:

They go into the dealer and instead of some careless  
remark, they know why they are there and they say, "Joe,  
I have something interesting to show you. Let's go in  
the back room here where we can talk a minute. You are  
going to make money out of this."

He guides the salesman with his pencil to catching the  
dealer's interest by following this talk-over piece here  
that the tire companies are going to have these tremendous  
bursts of advertising for the Fourth of July sale. Other  
dealers are in this thing, other good, smart, aggressive  
dealers.

Here we appeal to the motivation, to imitate others.

Then we appeal to the profit motive. "Now Joe, you  
3781 can cash in, if you will just avoid these possibilities  
of shortages, what I am here for is to sell you the tires  
you will need to engage in this profitable sale. Don't  
lay down here and fizzle like this." Then, we ask you to  
do these things to make a success of this promotion, and  
it guides the salesman to the many things they can talk  
about and look over and get a feeling for it.

Then, comes the time of not going on incessantly but we want to build an order. We want our salesman to write an order for tires. So, we put in here a shape up, and this "bridge to sales" you will find shape up, you can't go on forever; so, it helps him with the knowledge here of popularity of sizes to actually write with the pencil and figure with the dealer. He would say, "Joe, those 670 by 15s, what can you use, 20 or 10?" In a minute, Joe makes a mark or indicates an agreement. He's had it. He's buying it.

So, you build your assortment, transpose it to an order form for the tire company supply point to deliver, and the talk-over piece and the pencil have done a job.

On the back of all these talk-over pieces we put a planning guide. In our "bridge to sales" we say pre-plan. So, here the salesman plans what dealers he will call on, what he will suggest in the way of stock acquisition, and what they actually did. It gives him a chart to follow so

he doesn't miss anyone and keeps a record so his sales 3782 supervisor can follow him up.

He can use this, too, to show a faltering dealer. "Well, gee, all the other guys are going in on this. Why not you?"

So, it is a wonderfully helpful thing to a salesman and we have devised a whole number of these.

Q. Mr. Mulholland, on that point, is this—

Mr. Kelaher: (Interposing.) I really don't think he is finishing explaining yet.

Mr. Ballard: Do you want more explanation?

Mr. Kelaher: I think he was getting to the next page.

Mr. Ballard: I will be glad to have him if you want him to explain all of them.

Mr. Kelaher: You go ahead.

By Mr. Ballard:

Q. Mr. Mulholland, do I understand correctly that these are sample talk-over pieces? Do they represent the only ones that are in your files or are these simply samples?

A. There are others. These are Atlantic devised and produced, and we have others.

Mr. Ballard: Will you mark this RX-A-36?

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 36 for identification.)

3783 By Mr. Ballard:

Q. I show you a document marked RX-A-36, and I will ask you what that is so that we can get it identified for the record.

A. Well, we call this a stock check and order form.

Q. That is a stock check and order form?

A. Yes. This has a little different purpose. An oil company salesman until he knows the number and nomenclatures of accessory items such as spark plugs, filter cartridges, fanbelts, and can look at the shelf stock in the service station and tell the dealer his needs on a number basis, he isn't giving him the sales service he should. This both trains the salesman and helps him write an order. So, we list here the plugs and filter cartridges, fanbelts, and radiator hose. We took those four items. We asked our salesmen to carefully check inventory and develop orders and here are the numbers and the order of popularity which we felt helped train our man and get business.

We attached to it some other information he had that was in the tire company catalog but it took a Goodyear man and 20 years of knowledge to find it. We brought it all out and tacked it altogether so that our salesman had a full specification chart of what these fanbelts and radiator hose fit, so that in his hand he had everything he needed.

to do a thorough job of spot-checking and order servicing with his dealer on these items.

3784 Q. Do I understand this was developed by Atlantic?

A. Totally by Atlantic.

Q. Now, sir, we have had references in this record to double-teaming. Would you explain what double-teaming means to you?

A. Another means of helping our salesmen learn and become a better salesman and sell more is to use the wonderful opportunity for him to double team with specialists. Firestone and Goodyear have specialists in their supply points and sales organizations on tires and batteries. The AC people have a tremendous selling force of skilled people. DuPont and others. So, these people habitually work with automotive jobber salesmen; they rarely go alone. They go with either the automotive jobber sales force, or the oil company sales force, and their aim is to go to the service station dealer and sell and further their product.

We seek their help. In fact, I can remember at one period when we had practically our whole sales force working with DuPont from Maine to Florida on the spring deal, and we like it because it trains our man. It is interesting to the dealer because there are two personalities in the act and in my own experience in TBA, as a salesman, I learned my TBA nomenclature and lingo on each of these special items through a lot of double-teaming with the people I supplied.

Mr. Ballard: Will you mark this RX-A-37-A and -B for identification.

3785 (Whereupon, the documents referred to were marked Respondent (Atlantic) Exhibit 37-A and -B for identification.)

By Mr. Ballard:

Q. Now, I show you some papers marked RX-A-37-A and -B, and I ask you if you will tell us what those are, please.

A. Well, these are relatively new, within the last year we got very real about our recommended TBA inventory suggestions to dealers. We arm our salesmen and our whole organization with this philosophy that Atlantic doesn't expect a new dealer who has this very limited working capital to buy all the TBA he could possibly have calls for at the start. For instance, if a dealer put in stock all the tires that Goodyear makes in all sizes, shapes, and forms, passenger, he would have 104. He couldn't hardly keep them in the station or pay for them. So, we got—this recommendation, the first one, the thousand dollar level suggests to our people and our new dealers—this is for new starting dealers—to do without some of this upper level merchandise, to carry only at the most, say, 25 tires, in the lines he most usually will have calls for or can sell.

So, we go through in this thousand dollar level only the very necessary automotive items, such as tires, a few batteries, a coverage of spark plugs, a coverage of filter cartridges, fanbelts, radiator hose. When we get to polishes and chemicals, we get real humble, we get down to 3786 three cans instead of cases.

And even going without, so to speak, we consume a thousand dollars this quickly and he hasn't even got flash-lights or flash-light batteries or many other things.

Then, our philosophy is after the dealer has got a start and felt his way along and can afford to raise his inventory level, we recommend that he shoot to get to this \$2,000 level which broadens the line but still doesn't have everything.

And then, we regard this fellow as pretty much on his own. He becomes a deal buyer or a tire specialist, but the

whole philosophy of this is to be helpful and not load up our dealer or get him out of balance.

I went in a new station in Baltimore a year or so ago and saw 20 cases of Turtle Wax, but he didn't have much of anything else. He met a good Turtle Wax salesman.

Mr. Kelaher: I move to strike the last remarks. They have no application to RX-A-37-A or 37-B.

The Witness: Well, the purpose of this is to guard against that.

Mr. Ballard: Just a minute. Let Judge Kolb rule on the motion.

Hearing Examiner Kolb: I will let it stand.

Mr. Ballard Will you mark this RX-A-38.

(Whereupon, the document referred to was marked Respondent (Atlantic) Exhibit 38 for identification.)

3787 By Mr. Ballard:

Q. I show you a folder marked RX-A-38, entitled "Atlantic Sales Promotion Material." Would you tell us what these items are?

A. These are some pieces of promotional material involving TBA which Atlantic produced, originated, and delivered to dealers. We don't go into great volume on this, but we do some of it. The tire companies have tremendous amounts of promotional material available.

Mr. Ballard: Will you mark this RX-A-39 for identification.

By Mr. Ballard:

Q. I show you an additional folder, marked RX-A-39 and ask you is that the kind of tire company promotional material that you were just referring to that Atlantic mails out?

A. Yes, this is one piece of thousands of promotional pieces that come through the tire company program.

Q. As I understand it now, I am referring again to

RX-A-39, that is put out by Goodyear and distributed by Atlantic; is that correct?

A. Yes, sir.

Q. Now, Mr. Mulholland, I think you mentioned tire events. Could you briefly describe what you mean by tire events?

3788 A. We in Atlantic take claim to almost originating conception of teaching a dealer to sell tires as I can remember them 15 years ago. The factors are to get to the dealer a sufficient stock of tires to make a tire display that makes him look like tire headquarters is here, to give him tire atmosphere. To help the dealer that doesn't have capital, we in the old days used to consign tires for two weeks to use during the sale, and the tire company system we have introduced and many, many times the supply point has thus consigned or open billed tires to the dealers so they can make this display.

Another part of it is long effort by the dealer surrounded by this the atmosphere the use of promotional materials, the timing, and our salesman is heavily involved because you can't operate a tire event by just telling a dealer about it or asking him to run one. The salesman must participate in assisting and building displays in energizing this thing and keeping it going as hard as he can for a two or three-week period, and we found that when a dealer becomes involved without any financial pressure on himself, becomes involved with new tires, he suddenly begins to sell tires. Many times the tire event is the beginning of a new confidence and a step forward.

Q. I noted in the back of the room. Do you want to move it up so we can see it. Is this little model an example of a tire event, this model called "Swing to Safety"?

3789 A. Yes, sir. That is—we have had tire events for years—

Mr. Kelaher: (Interposing.) Does this have a number?

Mr. Ballard: Yes.

Will you mark this paper RX-A-40 for identification?  
(Whereupon, the document referred to was marked Respondent's Exhibit (Atlantic) 40 for identification.)

By Mr. Ballard:

Q. I show you, Mr. Mulholland, RX-A-40, which I see on the front is a picture of this little model that we have here entitled; "Swing to Safety." Is this a recent tire event sponsored by Atlantic?

A. That is the daddy of Atlantic tire events. We decided that we had had big sections of dealers go into this thing but early in 1958 we wanted 3500 dealers in the tire event, so we published this brochure—

Q. (Interposing.) That is this A-40?

A. This brochure, we conceived this idea entirely ourselves and I took that model to Akron, Goodyear and Firestone top management, and I pleaded our case that we were giving every Atlantic dealer, that is 3500 Atlantic dealers, this fixture on a no-charge basis, delivering it to them. These fixtures cost us just short of \$6.00 delivered into our warehouses. And the request from tire company management was to—on their side of the cost of this tire event, provide us with a special package, built around this

"Swing to Safety" theme that was also our development, which they did; so, they provided these ex-

pensive Day Glo banners and the inserts that fit in the three tires. We put our whole show together and on May 15, 1958, we delivered 3500 of these to these dealers and our salesmen followed quickly to help them erect them after having attended meetings where the fixtures were shown.

I traveled six regions in four days to carry the first fixture. It was like Paul Revere, almost, to get this thing unfolding on time. So that before Memorial Day we had

this tire atmosphere in our station, and we had a theme song that our TV weather shows and our big TV baseball shows and our radio could pick up: Atlantic's Swing to Safety Tire Promotion. Which they did.

Q. Mr. Mulholland, what is the advantage of a—

Mr. Kelaher: (Interposing.) I don't think he has finished his answer.

The Witness: Well, the advantage of this was that we got a big show with a few tires. The dealer could leave the fixture out at night, but he could even use old tires if he didn't have enough new tires. He could make a big atmosphere and an unusual atmosphere with a minimum amount of merchandise.

By Mr. Ballard:

Q. Has this promotion proved successful, sir?

A. Very definitely. Dr. Hirschberger, who con-  
3791 trols the product budget, told me he was more happy  
with the money he spent on this promotion where he  
could see visible sales results than most any in the company  
for a year.

We had a gain in the two key months when this was in operation. It was in operation from May 15 through July 4. And in the month of May and June, we had 19 percent tire sale increases across the board in Atlantic. Something happened.

Q. You attributed that to this promotion?

A. I do, and we are going to do it again in '59, bigger and better.

And the dealer didn't spend a nickel on it.

Mr. Ballard: Will you mark this RX-A-41-A through -E for identification?

(Whereupon, the documents referred to were marked Respondent (Atlantic) Exhibit 41-A through -E for identification.).

By Mr. Ballard:

Q. I show you a group of papers which are marked RX-A-41-A through -E. Mr. Mulholland, without going into great detail, do I understand correctly that this exhibit RX-A-41-A through -E, is the papers in connection with a battery event prepared by Atlantic, or battery events?

A. There is really three pieces here. This is a battery event, your battery checking account that we ran in 1952.

3792 Q. By this, you are speaking of "B"? Is that right? Does that have a "B" on the front of it?

A. Yes, sir.

Q. What is "A"?

A. "A" is a piece we mailed out to all Atlantic dealers in about 1951, before I came into the program, showing the various qualities of batteries of Goodyear versus competition. Produced by Atlantic.

Q. Can you briefly tell us—

Hearing Examiner Kolb (Interposing.): Is that the correct date on that?

Mr. Ballard: He says it is 1951, before he came, and it is a Goodyear item, so it must be after March of '51.

The Witness: It might be early '51.

Mr. Ballard: It says Goodyear.

Hearing Examiner Kolb: It is after the change-over?

Mr. Ballard: Yes.

The Witness: Yes.

By Mr. Ballard:

Q. Let's take "C" next.

A. This is all part, "C" and "D", are parts of a concept we had to develop a battery event by display which had never been done. So we got Firestone and Goodyear to ship our dealers large quantities of their lithographed dry charge battery carton and we developed a stapler



that would put these things together without a battery 3793 in them, and we erected displays, provided window posters, and this gimmick, this battery checking and savings account, and a card to go on the top of the display to help the dealer sell the idea of checking batteries to his customer and having interest in battery service and inspection.

Mr. Kelaher: Was a date fixed on this event?

The Witness: The bigger event—

Mr. Kelaher: (Interposing.) On the event you were speaking of?

The Witness: This one I would say was around 1956.

3794 By Mr. Ballard:

Q. You are speaking now of the displays—

A. Of this special display.

Q. Special display event?

A. We lost this because tire companies got tired of supplying these cartons at 21 cents apiece cost. They do go on, though, with Firestone, they often use this idea.

By Mr. Ballard:

Q. Now, Mr. Mulholland, does Atlantic also promote the sale of the home lawn and garden items that are classified as accessories under the plan?

A. We worked hard at that about three years ago. Mr. Colley again prompted me to explore the opportunity of using other than automotive TBA to help our dealers make profit.

Mr. Ballard: Will you mark this RX A-42?

(The document referred to was marked Respondent's Exhibit Atlantic 42 for identification.)

By Mr. Ballard:

Q. I show you an item marked RX A-42 and ask you if that is the literature you developed with respect to the promotion of these things?

A. Yes, sir.

Q. Although these are housewares and appliances and outdoor living needs, are they covered by the sales commission plan as you understand it?

3795 A. Most of the items that—they are all available to the dealer, we get a commission on most of them. Our aim here was to teach the dealer how to display these materials, give him recommendations from actual tests of what items could be safely tried out, and admonish him in several things he did to be careful of such as closing out at season's end and we didn't say everybody should get in it. We said many Atlantic dealers, well established dealers, could make extra profit and some of the newer ones in beach areas and what not, through this Atlantic approved thing.

Now, this is interesting because most oil companies, and our own years ago—

Q. Mr. Mulholland—

Mr. Kelaher: I don't think he is finished.

Mr. Ballard: I don't think so, but I think that the practices of the other oil companies—

Hearing Examiner Kolb: What has this got to do—I thought we got away from the bug bombs and the brushes and the brooms and the lawn mowers; back at it again?

Mr. Ballard: I don't know whether it is back in it or not, your Honor. I will tell you what this is offered for. It is offered to show the activities that Atlantic engages in in earning its commission. These are commissionable items. They are included in the gross figures that Mr.

Kelaher has put into the record. I don't want to make 3796 an exaggerated big thing out of them, but there is a tendency, I think, to imply that Atlantic doesn't do anything to earn this commission and I think Mr. Mulholland is amply demonstrating that they do. We have no breakdown, I think, of the amount of items covered by this.

Mr. Kelaher: May I ask if these are products of which company, Goodyear or Firestone or both?

The Witness: Both.

Mr. Kelaher: This particular exhibit is what?

The Witness: That was company-wide and articles of that nature were available in both programs.

Mr. Kelaher: Both programs.

Hearing Examiner Kelb: You have got skillets here and you have radios and you have got flour bins.

Mr. Ballard: It is doubtless apparent to your Honor that accessories encompasses a wide—

Mr. Mason: That is the way you will find it in the pleadings.

Mr. Ballard: The pleadings covered and the complaint has covered.

Mr. Ballard: Now, will you mark this RX A-43?

(The document referred to was marked Respondent's Exhibit A-43 for identification.)

By Mr. Ballard:

Q. RX A-43 I show you, Mr. Mulholland, and ask 3797 you if you will tell us what that is (handing document to the witness)?

A. Well, out of this experimentation and effort on other items we knew we needed a new piece of driveway display equipment. Surveys showed that the automobile customers don't get out of the car in many cases when he comes in for gasoline service so our management's philosophy was that we must wheel our show out to the customer.

We had eight or ten manufacturers bid and show their ideas of how this could be done after we roughed out a suggestion of what we wanted, and we finalized on this piece of equipment which we call our Atlantic driveway merchandiser. And it gives the dealer a means of displaying a myriad of things, tires. He can use it for all TBA items, motor oil, anti-freeze or anything.

Q. Do you change these suggested displays from time to time?

A. Yes. We have sold 500 of these units to our dealers on a no-profit to Atlantic basis where the dealer pays \$5 a month until he has paid the \$60, approximately.

Q. I intended to ask you, sir, whether this is a September 1958 suggested display? I asked you do you change the suggested displays from time to time?

A. Yes, we change these regularly and acquire this promotional material from various people, DuPont or AC or others, so that the dealer can follow this display 3798 suggestion on his driveway merchandiser the same way he follows it in his window display.

Mr. Ballard: Will you mark this RX-A-44-A and -B? (The document referred to was marked Respondent Exhibit A-44 and B for identification.)

By Mr. Ballard:

Q. Now, I show you a document marked RX A-44-A which is a single sheet and RX A-44-B which is a series of several sheets clipped together. This is headed "Dealer Sales Calendar." Would you tell us what this dealer sales calendar is and how it is used?

A. Well, after these years of developing selling and promotional programs and trying in with tire company like programs or similar programs, our enlightened management agreed in 1958 to a complete integration of TBA selling and promotional activity right in with our major petroleum product, and I was given the job of putting this together in some form that would have real meaning. So we devised a Masonite wall calendar which is about 3x5, a beautiful thing, that we distributed to every district manager, regional manager, and headquarters product manager in the company. It hangs on his wall, and each month after it has been thoroughly pre-planned, we send him the slides that activate the calendar for the month,

giving the people in the district and the region 45 days—

3799 Q. Just a minute, sir, the slide that you send him is in the form of RX A-44-A, right?

A. Yes.

Q. This is the one for August of 1958? This particular slide?

A. Yes, this is the salesman piece, but the slides had the same information.

Q. Yes.

A. There are two parts to this calendar. On the left is the selling program to the dealer, you can't sell from an empty wagon, we want to sell our sponsored TBA and petroleum products to our dealers. On the right is the promotional activity by the dealer timed to move this material to the consumer. The upper section tells what's to be done both selling and promotion nationally that month, and the bottom section describes the coming programs for sale to dealers and promotion by dealers the next month.

Mr. Kefaher: Sort of like Playhouse 90?

The Witness: Yes, sir.

The responsibilities are spelled out, boost of the double team is pointed out on the selling side. The responsibility flows all through the company. On TBA my first job is when this is agreed to by management for the year I work with the tire company people and the other suppliers to send to the regions the selling materials in the 3800 form of mechanical aids for their selling programs, forty days in advance, and that the flow of this promotional material be in the regions at the right time.

So everybody has the stuff and the know-how and can go to district meetings.

Now, this little chart is the salesman's. All our work in Atlantic is aimed at this salesman doing this job and

here we have him at a district meeting with a planned, organized program from the top down, and he gets it in the form of complete information and energization at the district meeting as he gets this calendar. And he puts this little binder calendar in his book. The book he keeps his record of all sales to dealers in, so that he has a record of what he is supposed to be doing, and this is done.

Do you know, this is gospel. They do—we do business as usual, but these things are done well throughout the company.

By Mr. Ballard:

Q. Mr. Mulholland, turning for a moment to the longer one here, RX A-44-B, do I gather that this is in typed form the calendar inserts month by month for the entire year of 1958, is that right?

A. That is correct.  
Q. And it shows for each activity for that month and the pre-planning for the next month?

3801 A. Yes, sir, and these were originated at the beginning of 1958. In other words, the whole year's tentative planning is laid out and then we go to work on it.

We now have our 1959 calendar laid out.

Mr. Ballard: Cross-examine; Mr. Kelaher.  
Hearing Examiner Kolb: Do you want to offer these in evidence before the cross-examination?

Mr. Ballard: All right, your Honor, I offer in evidence the exhibits RX-A-32 through 44-B.

Mr. Kelaher: No objection.  
Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibits A-32 through A-44-A and B.

(The documents heretofore marked for identification RESPONDENT'S EXHIBITS A-32, 33, 34, 35, 36, 37-A & B, 38, 39, 40, 41-A through E, 42, 43, and 44-A and B, were received in evidence.)

Hearing Examiner Kolb: We will now take a recess.

(A short recess was taken.)

3802 Hearing Examiner Kolb: The hearing will be in order.

*Cross-Examination by Mr. Kelaher*

Q. Mr Mulholland, in August '52 you were the TBA Section Manager or Section Supervisor, is that correct?

A. Yes, sir.

Q. And as such were you in charge of Atlantic's TBA program—Let me ask you this. Did your duties involve Atlantic's entire TBA program in all six marketing regions at that time?

A. From a staff standpoint, yes, sir.

Q. About that time you have testified that you or Atlantic became aware of an FTC investigation concerning the sales commission plan and that meetings were held with Atlantic dealers. Do you recall that testimony?

A. Yes, sir.

Q. Did you say anything to—you personally—Atlantic dealers attending the so-called Football meetings concerning the FTC investigation other than what you have testified to?

A. Nothing that I can recall; no, sir.

Q. Did you ask Atlantic dealers to report to Atlantic any contact made by FTC investigators?

A. No, sir.

Q. Did Atlantic at that time adopt a plan or policy of following up FTC investigators to determine what 3803 the Atlantic dealers had told the FTC investigators?

A. Not through any organization of mine or contact of mine.

Q. Were you aware of such a follow-up policy?

A. I was aware that some of the legal people talked

with dealers who reported they had been interviewed by FTC examiners in the field.

Q. Did you, were you ever shown any of the reports that came in?

A. No, sir; I had no part of that.

Q. During the course of your direct examination you referred to a survey of supply points made during your period as TBA Section manager. When was that survey made, approximately?

A. I think early 1933.

Q. Do you have a copy of the survey available?

A. I believe—I don't have one, no, sir.

Mr. Kelaher: I would like to ask counsel to furnish the survey.

Mr. Ballard: We have a copy of it. It's up in our office, Mr. Kelaher.

Mr. Kelaher: Do you have an extra copy?

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Kelaher: Could we have a copy tomorrow?

3804 Mr. Ballard: We'll bring it down.

By Mr. Kelaher:

Q. You also testified concerning prices; the general subject of prices on Goodyear and Firestone tires. I am somewhat unclear as to the testimony at that point and I would like to ask you, at what discount off list price do Atlantic dealers generally buy Firestone and Goodyear tires?

A. Offlist. In answering your question we have to stick to let's say the original equipment level of tire. On that tire they buy at—that is the average dealer in any metropolitan market—they buy at the 11½ percent off list plus 22½ percent on the average.

Q. You referred in your direct testimony to the figure of 22½ percent. What was your reference to that figure, do you know?

A. As a discount off code, and code is 11½ percent off list on the upper levels of tires. It drops down in percentage as you get into the lower levels of tires.

Q. And is that the dealer classification which necessitates the purchase of the \$5,000 to \$10,000 a year?

A. Yes, sir. The 22½ percent off code, if the dealer were buying direct from the tire company, necessitates an annual purchase of from \$5,000 to \$10,000 in tires.

Q. Well, do you mean that this discount off of code, the 22½ percent off code, is given to Atlantic dealers on 3805 their purchases of Goodyear or Firestone tires from supply points?

A. From most supply points.

Q. From most supply points?

A. In metropolitan areas. And even more in some cases.

Q. Yes.

Is that given regardless of whether they purchase \$5,000 worth of tires annually?

A. The usual situation is the supply point treats all dealers in that bracket, associate dealers. He may have a very large dealer in his group who he may give 25 percent off or even 27½ who buy in pressure on him as supply point. But our average Atlantic dealer in these metropolitan areas from a good supply point tries to keep competitive, lumps the thing and gives them about—gives them this 22½ off code.

Q. So there would be, as I understand your answer, Atlantic dealers purchasing less than \$5,000 a year who would get that discount?

A. Many, many of them. The smaller dealers don't do that tire volume right off the bat.

Q. In those instances where a supply point is only giving 20 percent, for example, do you go to Goodyear or Firestone and attempt to get the discount increased?

Mr. Mason: May I have the question read?

(The reporter read the pending question.)

3806 The Witness: If it is a company-owned store we go to the tire company people who control the store and ask for this more competitive price. If it is an independent tire company supply point it's just a matter of counseling and suggestion, he can do as he pleases. But, we urge and push the idea of all our dealers to join this 22½ percent situation as an average situation. I want to qualify that. If a dealer is way up in the country and he has to run 30 miles for delivery, many supply points are certainly entitled to a longer profit on the wholesale end.

Q. Well, are your urgings or counsels or pleadings sometimes successful in getting a larger discount for your dealers?

A. Oh, very often.

Q. Now, just to ask you a general question with respect to RXA-33 through 44-B—

Mr. Ballard: Does that include all the exhibits he put in, that he identified?

Mr. Kelaher: Yes, I am including all the exhibits that went in during your testimony. My question only relates to this.

By Mr. Kelaher:

Q. Many of these are dealing with Goodyear TBA. Now, I would like to know if you have counterparts for Firestone TBA where applicable?

3807 A. Yes, sir.

Q. One exhibit I would like to ask you about, RXA-41-C which is a facsimile of a check pay to the order of Mr. Atlantic Customer, \$7, dealing with purchases of

Goodyear batteries or \$4 on any Goodyear Delux all-weather battery (handing documents to the witness). Let me ask you this, was that a discount given to a customer by Atlantic or Goodyear? What was the purpose of that?

A. This was merely a suggested or offered piece as part of a battery event. If a dealer wanted to allow the customer \$7 for his old battery as he purchased Goodyear's top level battery or \$4 if the customer only wished the original equipment level, we had this for his use to eulogize the thing with the customer, but there was no requirement that the dealer use it at all. A lot of dealers liked it, a lot didn't. It was at a time when old batteries were a very high exchange battery.

Q. This was not subsidized by Atlantic or Goodyear?

A. No, sir; it was purely a dealer—

Q. Arrangement?

A. Promotional piece if he wished to use it. Some did, some didn't.

Q. Now, with respect to your tire events. Do you or does Goodyear or Firestone consign tires to Atlantic dealers in connection with these tire events you testified about?

3808. A. Yes, sir; in many, many cases.

Q. And in other instances do the Atlantic dealers purchase the Goodyear or Firestone tires for the events, for the tire events?

A. Many dealers who have plenty of working capital don't want consignment, they want to use their own inventory or want to buy specially for the sale.

Q. As I understand your testimony there is a cost to the dealer in connection with these tire events, either initially when he purchases the tires or ultimate when the consigned tires are sold. Is that correct?

A. In the case of the consignment or open billing the

dealer can return the tires if he doesn't sell them during the course of the event. In case the dealer uses his own tires it's up to him what he wants to buy to support his promotional effort.

Q. During the course of these tire events do you call on your Atlantic dealers to increase their purchases or consignments of Goodyear or Firestone tires in keeping with the particular event that is being sponsored by Atlantic?

A. Yes, these are timed to fit in with the big tire company holiday sales so the dealer wants tire stock and he either has it with his own capital investment or we try to help him through inducing tire company supply points or independent supply points to give this open billing 3809 credit for the period of the event. But the whole purpose of the event is to sell tires to the retail customer.

Q. Now, with respect to these many promotions that you have been referring to during your testimony, do Atlantic salesmen go in to Atlantic stations and assist in the preparation of the displays for particular events?

A. Yes, they do. That is a prime part of the event to take part in it, our service salesmen also take part in the event.

Q. And you, yourself, have taken part in such events?

A. I have been out there with a hammer and saw putting up displays to test events in service stations.

Q. And you have also put Goodyear or Firestone tires in front of Atlantic stations, is that right, in connection with events?

A. In assisting in events, yes, in a few instances on test experimental basis I have personally handled tires and displayed tires in stations.

Q. And your salesmen do that as a regular thing?

A. Yes, sir.

Mr. Kelaher: May I have a minute, your Honor, I don't think I have anything else.

I have no further questions.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: Thank you, Mr. Mulhol-  
land.

3810 (Witness excused.)

Mr. Ballard: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: Your Honor, Mr. Kelaher and I have provided three stipulations. With your Honor's permission I will ask the reporter to write into the record these three stipulations.

The first is a stipulation regarding the status of Warren County and Hunterdon County in the State of New Jersey.

(The stipulation is as follows:

It is stipulated between counsel for the Federal Trade Commission and counsel for the Respondent The Atlantic Refining Company that Warren County and Hunterdon County in the State of New Jersey were transferred from the Respondent's Eastern Pennsylvania Region to the Respondent's Philadelphia-New Jersey Region on January 1, 1955, and that the 15 day warning letter referred to in the testimony of Wilbur D. Gaestel at page 3140 of the record is of record in these proceedings as Exhibit 256-A through C.

Mr. Ballard: The next is a stipulation regarding the testimony of one Herman Gay, an Atlantic dealer, who could not be present at the hearings and I will ask the reporter if she will write into the record at this point beginning where I have made this mark over to the next mark.

(The stipulation is as follows:

Counsel for respondent, The Atlantic Refining Company

(Atlantic), and counsel supporting the complaint agree and stipulate that if Herman R. Gay, 26 Hudson Street, Johnson City, New York, were called as a witness by counsel for respondent Atlantic in this proceeding, such witness would testify as follows on (1) Direct examination and (2) Cross-examination, and that the following may be accepted by the Commission for the purpose of its determination and order herein as if such witness had so testified and in lieu of such testimony. The statements set forth below are made solely for the purpose of this proceeding or any review thereof, and for no other action, case or proceeding.

### *I. Direct Examination:*

1. I operate the Atlantic service station at 401 Main Street in Johnson City under a three-year lease with The Atlantic Refining Company. I have been the lessee of this station since 1937 and understand that I am one of the oldest Atlantic dealers in New York State. From 1930 to 1937, before becoming an Atlantic lessee, I worked in Atlantic service stations as a company employee.
2. Before 1951, when Atlantic sold Lee tires, Exide batteries and various accessories, I bought most of 3812 my TBA from Atlantic. During that time, however, I also purchased TBA from other sources, if I could get a better price. Sometimes I bought directly from the Lee factory.
3. When Atlantic stopped selling Lee tires, Exide batteries and accessories and started to sell Goodyear TBA, I began to buy some Goodyear TBA. I continued to buy substantial quantities of non-Goodyear TBA, however, and now buy Exide batteries exclusively and practically all of my accessories from various supply houses other than the Goodyear store. I buy my batteries and accessories mainly from Auto Supply Distributing Company, United Auto Parts Inc., and Whipple's Automotive Equipment Inc.

4. In all my years as an Atlantic dealer I have never been forced to buy any particular kind of TBA and have never felt that I was under any pressure to buy the kind of TBA sold or sponsored by Atlantic. I buy whatever TBA my customers want and will purchase and carry any TBA products I believe I can most easily and profitably resell. I buy Goodyear tires and Exide batteries because I want to and because of their quality, price and public acceptance and because of the service I get from their suppliers. I have never hesitated to advertise or display any of the TBA I buy even though I didn't buy it from either Atlantic or Goodyear. Similarly, I have never hidden any TBA I have purchased.

5. Although I have been an Atlantic lessee since 3813 1937, I have never heard any Atlantic dealer say he was afraid that his lease would be cancelled if he didn't buy the TBA then sold by Atlantic.

6. I do about 10 percent to 12 percent of my business on Atlantic credit cards and have often sold Exide batteries and other non-Goodyear TBA items this way. It never occurred to me that it might be improper to do this.

7. A few companies other than Goodyear solicit my tire business, but I don't buy from them because I can't tell what I am getting. I bought some recaps once from a salesman who solicited me and they were so bad I had to give them away.

8. I still have Lee advertising signs on the back of the doors of my tire racks. These signs are visible and prominent when the doors are open. Atlantic has never said anything at all to me about these signs.

9. My Atlantic salesman and I are good friends. He helps me with any problems that I may have with the operation of my station which sometimes includes TBA. He also encourages me to run and assists me in running TBA events and displays.

10. I am familiar with the terms of my lease and know it does not require me to buy any Goodyear TBA.

11. I know I could leave my station at any time and get another station with some other oil company.

3814 Having been with Atlantic for more than 28 years, however, I am obviously satisfied with it and want to stay with it.

12. After as many years of successful operations and friendly relations with The Atlantic Refining Company as I have had, I imagine I am in good standing with the company and have nothing to fear with respect to the cancellation or non-renewal of my lease. I believe lease renewals are based primarily on adequate gasoline gallonage, cleanliness, service to customers and all around efficient operation. I have never thought the brand of TBA carried had anything to do with the renewal of my lease or with the cancellation or non-renewal of any other dealer's lease.

13. I consider myself and have always considered myself my own boss and an independent businessman who runs his own station. I know that whatever I earn from my station is based on my efforts and skill as an operator.

14. I remember talking to an agent of the FTC back in 1953. I don't now remember what I said to him, but I do recall that I told him some of the things stated above.

## II. *Cross-Examination.*

1. I operated under a one-year lease (CX 88 E1-2) from 1944 to 1954. On June 1, 1954 I entered into a three-year lease, the form of which is identified in the record as CX 88 E1-2. On June 1, 1957 I entered a further three-year lease, the form of which is identified in the record as CX 3815 88 A-1-2.

2. Prior to 1944, my rental was computed on a cents per gallon basis. Between 1944 and 1957, my rental

was computed on a flat rate per month plus 6 percent of gross receipts from all sources, except gasoline, in the manner set forth in CX 88 E-1-2 referred to above. Since June of 1957, my rental has been computed as a percentage of gross receipts from all sources, in the manner set forth in CX 88 A-1-2 referred to above.

3. Each year I confer with the Sales Supervisor and my salesman at the Atlantic District Office, Binghamton, New York, at their request. We review the past year's sales of gasoline, oil, TBA, etc. The Sales Supervisor and my salesman stress among other things the importance of a balanced sales program for gasoline, oil and TBA, and review statistics concerning this matter. Prior to June of 1954, this conference was held each year about two months prior to the time my lease expired. Since I have been on a three-year lease this conference has been held each year about two months prior to the anniversary date of my lease.

4. For many years I purchased Lee tires from Atlantic and carried them in my station primarily. On or about March 1, 1951, Atlantic discontinued the sale of Lee tires. At that time I changed from Lee tires to Goodyear tires and

tubes and have been carrying Goodyear tires and 3816 tubes primarily since that time. I purchase Goodyear tires and tubes from the Goodyear service store in Binghamton, New York, which is my designated "supply point."

5. My estimated annual volume of tire and battery sales in 1953 was \$4,000 and \$1,000 respectively. Currently, my estimated annual volume of tire and battery sales if \$4,500 and \$900 respectively.

6. My station is identified with Goodyear window valances and outdoor sign, and has been so identified since about March 1951. Goodyear personnel put up such signs.

**III. Redirect Examination.**

1. In connection with the annual reviews, the Atlantic personnel have never objected to my handling Exide batteries and non sponsored accessories and have never tried to make me buy more Goodyear TBA:

2. The Goodyear signs were put up in my station with my consent and approval.

Mr. Ballard: And the third is a statement of Crawford Bryant, an Atlantic service station operator mentioned in the testimony, and I'll ask her to copy into the record beginning at the mark and ending at this mark and disregarding the material that I have drawn a line through.

(The document is as follows:)

My name is Crawford Bryant. During the period from November 1, 1952 to September 30, 1958 I operated 3817 a service station at McDade Boulevard and Fairview Street, Woodlyn, Pennsylvania, under lease from The Atlantic Refining Company. I am presently operating a service station at Prospect Road and First Terrace, Fort Lauderdale, Florida under lease from The Atlantic Refining Company.

While I was operating the McDade Boulevard Atlantic station, I bought almost all my tires, batteries and accessories from Ed Parris, my Goodyear supply point, because I thought his prices were fair and I liked his credit terms. Credit was important to me because I was often short of cash at the end of a month as a result of gasoline price wars in the neighborhood.

I am informed that on January 26, 1957, William Lee Franks, a salesman for Auto Parts and Radiator Company, testified in the Federal Trade Commission proceeding involving Atlantic and Goodyear that in July 1956 I refused to buy batteries from him and stated, "I have to buy from Parris or I will be put out of my station." I remember Mr.

Franks and remember buying from him now and then. I don't remember making the exact remarks he mentioned; however, it is quite possible I gave him the impression I was obligated to buy from Parris. I was plagued by salesmen to the point of interfering with the operation of my station, and I used to use such statements as a brush-off.

As a matter of fact, I felt free to buy any TBA I 3818 wanted.

Mr. Ballard: I have nothing further.

Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Ballard: If your Honor please, Mr. Kelaher and I have agreed that although I'm planning to close my case tomorrow I may have leave to introduce into the record by stipulation within a reasonable time thereafter Good-year price information for the year 1952.

That is all I have, sir, for today.

Hearing Examiner Kolb: You have nothing tomorrow morning, you want to adjourn until 2:00 o'clock tomorrow afternoon.

Mr. Ballard: If it pleases your Honor, yes sir.

Hearing Examiner Kolb: We will adjourn until 2:00 o'clock tomorrow afternoon.

3820 Hearing Examiner Kolb: The hearing will be in order.

DWIGHT T. COLLEY was called as a witness on behalf of The Atlantic Refining Company, and, after being properly and duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Ballard.*

Q. Would you give the reporter your name and address?

A. Dwight T. Colley. My home address is 225 South Van Pelt Street, Philadelphia.

Q. And, now, sir, could you give us a resume of your history with Atlantic Refining Company?

A. Yes, sir. I came home from the First War in 1919 and went to work in the spring of 1919 as a salesman and the New England territory was opened the following winter. I was sent up there as a salesman in the Providence territory. I have been from then on district manager in Rhode Island, regional manager in New England, and in about 1948 was transferred down to Philadelphia as assistant sales manager of the company.

A couple years later I became the sales manager, and shortly thereafter, the vice-president of marketing 3821 for both domestic and foreign market.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearng Examiner Kolb: On the record.

By Mr. Ballard:

Q. And I think it was in 1949 that you became general manager of domestic sales?

A. Like I said, I became a sales manager.

Q. Then, I believe it was in 1951 that you assumed your present position?

A. That is right, sir.

Q. Now, sir, turning to the history of The Atlantic Re-

fining Company, it was organized, as I understand it, in 1870; is that correct?

A. That is right.

Q. And what happened briefly thereafter?

A. Well, the organization was put together in 1870, and was picked up by the Standard Oil Company in 1911 as a—

Q. (Interposing.) Now, sir, I don't want to interrupt you. I suggest it was 1874 that it was picked up by Standard.

A. That's the time we were disorganized, 1911. In 1874 we were picked up by the Standard Oil Company and became a refining branch and handled the Pennsylvania business for a number of years.

3822 Q. Was that both refining and marketing in Pennsylvania?

A. Well, we started in as a refiner with some business abroad. As the years went on, we became the sole representative, both marketing and refining, for the parent company.

Q. And that was in Pennsylvania?

A. In Pennsylvania. And in Delaware.

Q. Then, I think you told us that the Standard group was dissolved in 1911?

A. I am ahead of my story. That is right. In 1911, at the time of the dissolution, we were cut free as a separate company and went about establishing our production and marketing and balance.

Q. Now, at that time, I mean by that 1911, was the domestic marketing organization of Atlantic confined to Pennsylvania and Delaware.

A. Yes, at that time in 1911 it was confined to Pennsylvania and Delaware, with a little marketing abroad.

Q. And then, the growth to its present territory has been gradual thereafter, I assume?

A. That is right. You see, we were primarily a refiner

with just business within these two states. We had to buy all of our crude oil, and we started to grow in all directions, getting crude and spreading our marketing as our business increased.

Q. About when did Atlantic open its own first 3823 service station?

A. 1915 Atlantic opened what we believe was the first full-fledge drive-in service station in the Pittsburgh area. Before then, of course, the business had been through garages and grocery stores. This was a business devoted entirely to marketing gasoline in a service station designed for that purpose.

Q. Now, moving forward to 1919 and the nineteen twenties, which would be the date of your joining the company, by that time did Atlantic have substantial service station coverage?

A. Well, in 1919, or about that time, we had been building service stations throughout Pennsylvania and Delaware, and, of course, taking on additional garages and business of that kind.

As I said, I went to Rhode Island in that fall, and at that time, in 1919 and '20, we began to build service stations and take on business in the New England area and at the same time in the Southern area.

Mr. Kelaher: Mr. Examiner, I don't know how far we are going to pursue this history of Atlantic. I don't see the relevancy of it to this case. That is going back to the early period of Atlantic.

Mr. Ballard: I think the relevancy will become evident. We are entitled to show the history and what part the service stations played in our business.

3824 Hearing Examiner Kolb: All right; proceed.

By Mr. Ballard:

Q. Now, sir, during the nineteen-twenties, who operated these service stations that Atlantic was building?

A. Well, the service stations that we built, we operated on payroll, operated ourselves entirely for several years.

Q. Did you then change to the lessee method of operation?

A. At the beginning of the thirties, of course, the idea of service stations had caught on throughout the trade; that is, competitors were building them. We began to find we got more interest, more enthusiasm from dealer operation than from payroll.

Q. By dealer operations you mean lessee operations?

A. Yes, sir.

We found if we leased these stations to another individual—in many cases they were payroll operators of these stations—they took these stations and when they had a stake in it, the business improved rapidly. So, gradually over a period of years, they were all turned from company operation to dealer operation.

Q. And does the company today believe that less operation—and I take it when you say dealer operation, you are referring to lessee operation; we have been speaking here of lessee operations—is it the company's opinion that that is a better form of operation?

3825 A. I believe and the company believes and apparently the industry believes that the most satisfactory operation of a service station is by lessee dealer.

Q. Do you know, sir, what percent of your domestic gasoline sales are accounted for by lessee dealers today?

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

The Witness: About 40 percent.

By Mr. Ballard:

Q. Mr. Colley, at various times in the course of these proceedings, the following companies have been named as

competing with Atlantic—I will list them off: Esso, Gulf, Amoco, Texas, Tidewater Oil, Sinclair, Cities Service, Mobile; Sun, Shell, Pure, Calso, and perhaps some others.

I ask if that list includes Atlantic's principal competitors?

A. That includes Atlantic's principal branded competitors.

Q. We have had reference to lesser known brands and unbranded companies. Do they also compete in Atlantic's territory?

A. Everybody competes in Atlantic's territory, sir.

Q. And do I understand from your previous testimony that the majority of these companies that I have named operate with lessee dealers?

3826 A. Practically all the branded companies operate principally with lessee dealers.

Q. Is there a competition to attract and hold the qualified lessee?

A. I would say that competition is the most serious competition in the industry, to hold good dealers.

Q. Can a qualified dealer get a lease from any of these companies?

Mr. Kelaher: Objection.

Hearing Examiner Kolb: Objection overruled.

The Witness: Yes, we have lost a lot of our qualified dealers to other companies.

By Mr. Ballard:

Q. Now, in seeking to attract and hold dealers in competition with these other companies, is Atlantic as well known as some of these that I have mentioned to you?

A. Well, you would have to qualify that. In much of our area, of course, they are not as well-known. We refer to it as public acceptance. Here in Pennsylvania, we have good public acceptance. As we go away to New England

and to the South, many of the companies are much better known than Atlantic.

Q. And what steps does Atlantic take to offset its relative lack of public acceptance in areas such as the South?

A. Well, we have constantly produced a quality 3827 product. As a matter of fact, at many times ahead of the rest. But we must depend principally on the way the stations are run, on the service in those stations.

We have found from lots of research that the public wants to buy a good brand at a convenient location from a good dealer. We measure the dealers as 70 percent of the influence. Therefore, we put our effort, as one of the smaller companies, on getting good trained dealers in these stations.

Q. And your dealer program, of course, includes the training program that has been described here and the building of attractive stations which has also been described. We have heard described your long-term dealer lease policy. Would you state for us the purpose of Atlantic in adopting that policy?

A. Yes, sir. Of course, the dealer that takes the service station today has a choice of service stations in a given town. As our representatives talk to him, he wants to know why he should take our station against a competitor's. Well, if we have a good location and he is satisfied with our advertising program, he wants to be sure he will not have that station on a temporary basis.

We were the first company to give long leases. We felt it was a strong point in selling the station; it gave assurance of continuity. If a man made a success of 3828 the station, he got a long lease and could feel he could enjoy that success. This is one of the things I am very sincere about and one of the things we led in. Many of the companies have followed. I am quite proud of it.

Q. We have also heard described, and there is intro-

duced in the record, your percentage lease, percentage rental program. Is that also part of the program of making the franchise attractive to dealers?

A. Yes, sir; it's hard to make rent attractive to anybody that has to pay it, sir. We have tried all methods. We finally adopted the percentage rental based on the business the dealer does, because we think it is the fairest way of collecting rent. We feel the real measure of a place is what it does and, therefore, percentage lease is again something that I think few have; few of our competitors have that. I think that is a good form of lease.

Q. Now, Mr. Colley, I would like to turn to the development of Atlantic's TBA program and go back again to the year 1919 and ask if any of the things we now think of as constituting TBA were being sold in Atlantic stations at that time?

A. No, sir. When we first opened the stations, and I had the responsibility of opening them in Providence, we built them that winter and opened them, we sold almost nothing in those stations that you would call TBA today.

As a matter of fact, the expression "TBA" I didn't hear until a good many years later.

Q. As a matter of interest, when do you recall the expression coming into the trade?

A. Well, it was pretty close to the Second War before it was glibly said around by our people.

Q. You did, however, before the Second War begin to sell, let us say, tires, batteries and some accessories at your stations, did you not?

A. This was trial and error as far as I am concerned. We opened these stations. Previously, gasoline had been sold at garages. A man went to the garage to get his car repaired, and usually went to a tire store in town for his tires, somewhere else for something else.

Well, we started out with gasoline alone and gave ex-

cellent service. But we soon found that the motorist wanted to get other things in connection with that. We had air compressors and an elaborate set-up for people, and so, trying piece at a time, tires and various things to sell, we began to buy and put those in the company-operated stations to sell. That was the beginning of TBA, I suppose.

Q. Now, then, when Atlantic began to lease those stations to the dealers instead of operating them, themselves, did they continue to buy these items that you have been describing and resell them?

A. We did it rather badly. You see, many of these 3830 original dealers were formerly company employees, and they wanted the station to run, and we leased it to them.

They wanted to get tires and batteries and goggles and dusters—those are the kinds of things that were sold originally. They didn't know where to turn for them. So, we set up mostly under local management, that is, we managers in the field found places to buy them and resell them to our dealers. That was the beginning.

I didn't know anything about buying them; so, we learned how to do it as we went along.

Q. At that time, and I am speaking now of the early thirties—was that the time you started in it?

A. Right.

The goggles and dusters I will tell you sold surprisingly well. Off the main roads, the roads got dusty in those days, sir.

Q. Nevertheless, referring to the early 1930's, at that time were the tire companies selling to oil company outlets and particularly to Atlantic outlets?

A. No, sir. I can remember very well those early days. The tire companies would take garage dealers usually, take them into their home offices and teach them how to repair tires. The first effort was to how to repair tires, and they

would set them up in tire stores. And you, the motorist, went to those stores to buy your tires and get repairs.

3831 In the service station there was no organization set up by the tire companies in those days to either sell or supply the service station.

Q. Now, there were, I assume, in existence suppliers of parts and equipment in those days?

A. Yes, there were part suppliers.

Q. Again, in the early thirties, did these parts distributors carry tires and batteries as a general rule?

A. No, you would have to go—you went to a tire place for your tires, and a parts place for your parts, and to a garage to get them assembled for your car.

Q. And it was against that background that Atlantic began to buy and resell to its dealers?

A. You see, all of us had pieces, sir, and the problem was who was going to put the pieces together into a central service.

Q. Our record here shows, and I think I am correct in this, that Atlantic's first contract with Lee was at some time in 1932; that its first contract with Exide—

A. (Interposing.) '37, wasn't it?

Q. Yes, sir. I believe that covered the Philadelphia region only, and the record shows that the Exide contract was expanded to the entire marketing area in 1945. Does that meet with your recollection?

A. That is what the records read as I read them 3832 through. From my own experience, all these things get to be the Lee deal and the Exide deal was excellent here in Philadelphia.

Mr. Kelaher: Objection, your Honor. I think he should be just responsive.

By Mr. Ballard:

Q. Would you describe for us the Lee and Exide deal in Philadelphia and elsewhere, sir?

Mr. Kelaher: Your Honor, I think the contracts speak for themselves.

By Mr. Ballard:

Q. By my previous question I had not meant for you to describe the terms of the contract, but how the deal worked out.

A. Well, the deal worked out—I was about to say as you got away from the home office—: Well, I came to the Philadelphia region prejudiced against these deals because in New England and New York state, I found that the supply of Lee tires was very scanty as you got out of Pennsylvania and the acceptance of Lee was very much less than it was here. An excellent tire but nobody knew about it as you got away from home.

Exide had an excellent name everywhere. But for us to buy the batteries as the Atlantic Refining Company, try to store them in our warehouses, and then resell them to the dealer, didn't work out well at all because we didn't have the facilities; we didn't have the charging battery,

tables; we were just unable to give good delivery and 3833 good service on it as we got away from home. That's the way it worked out.

Q. What about your accessories in this program? Will you describe how that part of the program worked?

A. Again, Lee didn't have accessories at that time. This whole thing came about trying to get customers attracted in the station and the dealer to make money; therefore, we tried to find out what the customer wanted in accessories.

The first big accessory, as some of you will remember—

Mr. Kelaher: I am going to ask that the witness confine himself to the question being put.

Mr. Ballard: The question is a perfectly simple question and the answer is perfectly responsive.

Mr. Kelaher: It pertains to matters that are not being asked. I don't care to interrupt this gentleman. But I don't think the answers are responsive.

Mr. Ballard: I want a ruling on this matter.

Hearing Examiner Kolb: Will you read the question?

(The reporter read the question commencing at line 3 of this page.)

Hearing Examiner Kolb: All right; proceed.

By Mr. Ballard:

Q. If you had finished your answer, which I do not think you had, would you describe for us the kind of 3834 problems involved in the selling of accessories through service stations?

A. Yes, sir. I hadn't finished my answer. But the problem was that we would go to supply houses and buy light bulbs. Those were the days that light bulbs failed all the time in automobiles. They were all sizes. We would try to buy a range of sizes of light bulbs and try to have them in a central spot and to see that the dealers had a range of light bulbs in their hands when they needed them.

That was the thing I wanted to bring out. It was a very complicated problem. Spark plugs, the same way. We started with things we felt were in demand and we could handle. We found that spark plugs changed so rapidly that a dealer in Worcester would want spark plugs of a different size than he had.

The reason I am glad to testify to this is we were doing a very unsatisfactory job of supplying dealers under this method.

Q. Now, as a matter of fact, sir, taking the New England region—your own region—how many warehouses did Atlantic have for the distribution of accessories?

A. We started in—well, we had six main warehouses in New England roughly when we started in in which we handled our gasoline and lubricating oil. Well, of course,

they were not at all fitted for handling accessories. We finally got down to about three, and finally to one warehouse from which we attempted to ship by mail 3835 accessories throughout the southern New England area.

Q. And do I understand that the other five warehouses then did handle tires and batteries?

A. They handled tires and batteries, but they gave up the accessory end of it.

Q. And did you in addition have a few supplying dealers who handled these items for your other dealers?

A. That's the next stage. We found that was the beginning, I suppose, of local supply points. We had in some states, some areas, some dealers who would stock enough of these accessories so that they could supply dealers locally. Very spottily in New England.

Mr. Kelaher: I wonder if we could have some dates with respect to this type of testimony.

Hearing Examiner Kolb: I don't think you need dates, Mr. Kelaher. It is general information. I don't think you need to pinpoint it down any further.

Mr. Ballard: Mr. Kelaher, you have full rights of cross-examination if you feel dates are important.

By Mr. Ballard:

Q. To sum it up, sir, I gather you were not satisfied with Atlantic's TBA program?

A. There wasn't anybody satisfied, sir. Neither the dealers, the company, or me.

Q. Now, again, to avoid a repetition of what's in 3836 the record, it is shown in the record that in 1948 Atlantic directed an inquiry to certain tire manufacturers with regard to a possible change in the program. I believe it was about that time that you came to Philadelphia. Is that right, sir?

A. Yes, sir. I came down between '47 and '48.

Q. Were you in charge, in overall charge of the investigation of other programs and the decision as to which program should be made?

A. Yes, I came down as assistant manager of domestic marketing with full responsibility for the regional field market, and immediately set about improving services, because I wanted to eliminate the problems in the field for other people that I had as a regional manager. So I made it my business.

Q. You will recall again the record shows that in 1950 the Firestone program was tested in the Wilmington and Erie districts, and the Goodyear program in the Newark district. Could I ask you what Atlantic's attitude was toward those tests?

A. Well, I was going to have the responsibility of improving a program that was unsatisfactory. I wanted to make up my mind before I made the move and committed a lot of sales people and affected the welfare of the dealers that it was thoroughly researched; so, following the request to the various big, large tire companies for information, we said the best way to do this is to field test it. 3837 It looks as though it would be better, but let's take

two companies and test their program, one in one field and one in the other. And I felt that a good many people thought, our own sales people thought that shifting from this long experience of working with Lee, for example, and Exide, might be damaging and the dealers wouldn't like it as they were used to this brand.

It didn't seem as much of a chance to me because I knew they weren't happy. We put on the actual test and in certain districts put the program on for tests, and, of course, the results were overwhelmingly in favor, the dealers were very much in favor of the way it worked out.

Q. Now, sir, it shows in the record, and you have men-

tioned, that Atlantic has these programs with two companies, Goodyear and Firestone. I ask you what is Atlantic's reason for having a program with the two different companies?

A. Yes, when I started out I suppose that I figured we would have one company and see which did the best. But I found many advantages in having two companies. For example, we had two very strong companies with excellent reputations, and they were competing for our acceptance. I told them I was interested in a program for our dealers that would help our dealers make more money and sell more product, and I was anxious to see how well—what their coverage was, what were their supply points.

As it grew and we spread the program, we found 3838 that in some territories, for example, Firestone had greater acceptance; in other territories, Goodyear did. In the process of the trials we came to the conclusion we would be very much better off with two companies and segregated so we could determine which one was doing the best job.

Q. There has been considerable testimony in the record about a number of TBA suppliers other than Goodyear and Firestone who are calling on Atlantic dealers in various parts of the country. I would like to ask, in view of that, those sources of supply, why is it necessary in your view for Atlantic to offer a TBA program, a sponsored TBA program for its dealers?

A. It was absolutely necessary. Everybody, of course, has their own axe to grind. We have found that the dealer to be successful must do what we call a balanced sales job. If he gets to doing an overwhelming repair business, he hurts the rest of his business and drives nice trade away. We find if he becomes obsessed with tires, he neglects something else. So, our job is to see that he doesn't

over-buy and he buys the kinds of things he can sell readily.

We have picked up a lot of know-how since 1919 when I began fumbling with it. We now have some experts, and I am sure that our ability to guide it and coach it is absolutely necessary.

Q. Now, sir, under Atlantic's—

Mr. Kelaher: (Interposing.) That last part of that 3839 last answer, could I have that, sir?

(The reporter read the record as follows: "We now have some experts, and I am sure that our ability to guide it and coach it is absolutely necessary.")

By Mr. Ballard:

Q. Under Atlantic's TBA policy—and I may say the March 1, 1951 letter outlining that policy is in the record—under that policy if a particular dealer can make a deal that is better for him under his particular circumstances, what is Atlantic's policy in that case?

A. By all means to urge him to do it, to make it.

Q. And by that, even if it involves non-sponsored TBA?

A. Oh, yes. That was true at the beginning. It began that way. I wasn't sure that here, for example, in Philadelphia, in the neighborhood of Conshohocken, that in many cases the dealer would want to change from what he had, as probably in cases could sell some other brand better. What I was anxious was that he have a good brand and that we provide a program and not shut him out from a better program.

You can see it was the problem. That was what I was most afraid of when I started. Therefore, we, from the very beginning, said that the dealer must have a chance in all cases to buy what he could do the best with.

Q. Does Atlantic extend the benefits of its dealer pro-

gram to all dealers, regardless of their TBA purchasing practices?

3840 A. Yes, sir.

Q. Yesterday afternoon, Mr. Mulholland described to us some of the things that Atlantic does in the operation of its TBA program. I won't attempt to summarize Mr. Mulholland's testimony. In any event, he did describe that, and we have had other descriptions of the program in action. I ask you whether the operation of that program costs Atlantic substantial sums of money?

A. Yes, sir, it certainly does.

Q. In your view and in your position with the company, how does the cost of operating the program compare with the commission's received thereunder?

A. My accountants tell me that it almost balances. That is not the objective. The objective of it is to help the dealer. But if I can tell my associates that the program is paid for by our commissions, then, it is very nice. And my accountants tell me that is about so.

Q. So, the commissions just about equal the cost?

A. That is right.

Mr. Ballard: I have no further questions. Cross-examine.

Mr. Kelaher: May I have a few minutes, your Honor?

Hearing Examiner Kolb: All right. Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

3841 *Cross-Examination by Mr. Kelaher.*

Q. Mr. Colley, I would just like to ask you a few questions to straighten in my mind, at least, some matters.

Your attention was called to Esso, Gulf, Amoco, Tide-water Oil, and other oil companies, if you recall, and questions were asked concerning your competition with them for dealers. I believe you stated that you lost a lot of

dealers to these other companies. Isn't the reverse also true that Atlantic has gained dealers from these other companies?

A. I may be prejudiced, but I don't think we get our share, sir, but we try.

Q. Then, you do get some dealers?

A. Yes, sir.

Q. And it is not uncommon to raid one another's outlets for dealers, as I understand?

A. No, sir.

Q. Now, I would like to direct your attention to the field tests that were made when Atlantic decided to test the TBA programs. What is your recollection of the circumstances surrounding the companies selected for those tests in Wilmington, Erie, and Newark?

A. Well, this is from memory, but the purchasing department of our company had been asked to contact five or six of the major tire companies to see if they 3842 were interested before I got into it. Then, as we discussed it with my staff of what companies to use, we set up a criterion. We said we wanted companies that had good public acceptance in our territory. We wanted companies that had supply points. The big problem that had been eating me had been the storage and supply of batteries and accessories and tires, and we wanted tire companies, if we could, that also handled accessories, batteries. Of course, it was simpler for the dealer, simpler for us, if you could do business with one supplier. And the dealer who has very little cash to spend likes to keep it to buy from as few places as possible. This was shortly after the war when we had so many shortages. As a matter of fact, I remember—

Q. (Interposing.) My question, not to interrupt; you can elaborate—

A. (Interposing.) I don't want to elaborate. I thought you asked how we arrived at the ones.

Q. Yes.

A. As I say, when we applied those tests, there were very few that could comply that had the acceptance, that had the supply points, and that handled accessories as well. And we came down to the two main ones, two of the very few that did, which were Firestone and Goodyear.

So, we sent for them, or asked them to come in and discuss it with our people, my TBA specialists, whether 3843 or not they were interested in such a program. That's how we went about it.

Q. Isn't it a fact that you did not originally select Goodyear to test the TBA program in the Newark area?

A. I don't remember, sir.

Q. Isn't it a fact that Firestone was originally selected to test the TBA program in the Newark area, as well as the other two?

A. We can find that out.

Q. I am asking what your recollection is.

A. I don't recollect. I would like to help you. We asked the district managers—you see, we called for volunteers from district managers who would be willing to conduct these tests. And to my TBA man, I said I wanted a fair test. I wanted it done in territories where we would get fair results, where the district managers were interested. I know what the final selection was, but I didn't know, I had forgotten there had been a previous selection.

Q. You are willing—I will withdraw that.

You don't recall that on March 17, 1950 Atlantic was advised by Firestone, almost, by Firestone, that it would not go into the Newark area on a test basis?

A. I don't know that.

Q. You don't recall that at all?

A. No.

3844 Q. Was there dissatisfaction among your staff, all of your staff, concerning the change from Lee-Exide to the Goodyear and Firestone TBA programs?

Mr. Ballard: Before you answer that, could I ask do you mean to say "your staff" or "all of your staff"?

Mr. Kelaher: Your immediate staff,

Mr. Ballard: You said all.

Mr. Kelaher: I am limiting it to the immediate staff.

The Witness: You couldn't say all the staff was in favor of changing or not changing. You are asking me before?

By Mr. Kelaher:

Q. I am talking about the period before you changed to—

A. (Interposing.) The staff was divided as to how wise it was.

Q. And there were those who were satisfied with the Lee-Exide arrangement and wanted to continue it, weren't there?

A. Yes, the TBA manager himself.

Q. Who was that?

A. That was Heidman at that time. I think he felt it would be an awful lot of work to change. Of course, he didn't have to run the stations.

Q. Are you familiar with the TBA survey that was made in 1948 and '49 concerning Atlantic's program 3845 then in existence? I am referring now to the time they carried Lee tires, and Exide batteries, and a line of accessories?

A. Yes, I am.

Q. Are you familiar with the fact that that survey shows that 67 percent of Atlantic dealers preferred Lee tires?

A. Yes, I am.

Q. And that 79 percent of Atlantic dealers preferred Exide batteries?

A. Yes, I am. I am also familiar with who made the survey and how limited the survey was. As we went into it, we felt it was not a very thorough or expert job done by a very nice man who had never been a research man before. And it just didn't stand up as we dug into it.

Q. So, you place no reliance on the survey?

A. No, and experience has shown that I was right in not placing reliance on it.

Q. Isn't it a fact that Lee and Exide did have consumer acceptance in areas other than the immediate Philadelphia area?

A. Well, they had—when we talk about consumer acceptance, it's like gasoline, sir. They had varied acceptance. I would say as you went out from the perimeter of Philadelphia, it got less and less.

Q. Was that true of Exide batteries, too?

A. Exide had very much better national acceptance. We didn't drop Exide because it didn't have good acceptance.

Q. What was your reason?

A. As I said, in the direct testimony, before the days of dry charges, when you would ship them from Maine to Florida and try to store them and resell them, you were in trouble, no matter how good the battery was.

Q. Isn't it a fact that one of the principal reasons you changed from Lee-Exide to Goodyear-Firestone TBA programs was financial in nature?

A. One of the principal reasons?

Q. One of the reasons that Atlantic changed.

A. The principal reason for changing was my anxiety to see that our dealers had a profitable program to handle. I would say it was a corollary. It would be a good deal

because it was one of the deals that was good because if it was good for the dealers, it would be good for Atlantic; if it was good for Atlantic, it would be good for the tire companies.

Q. Did you believe at the time you switched over to Goodyear and Firestone TBA that most of your lessee dealers would go along?

A. At the time we made the switch, I felt they would. The tests indicated they would.

Q. And didn't you feel that a good number of your contract dealers and distributors would also go along with the programs?

A. Yes, I felt it was so much better—everything 3847 is relative, sir—I felt it was so much better than what we had it would probably gain acceptance rapidly.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no further questions.

Hearing Examiner Kolb: You are through, Mr. Colley. Thank you.

(Witness excused.)

Mr. Ballard: Your Honor, it has been called to my attention that in yesterday's testimony at page 3713 I asked Mr. Walsh a question as to the percentage increase in "gasoline sales per lessee dealer". Mr. Kelaher and I have stipulated that that question was intended to refer to gallonage sales, sales of gallons, and not dollar sales, and that Mr. Walsh's answer likewise referred to gallonage and not to dollars.

Now, sir, I find that we have a number of exhibits which have been identified but not offered in evidence. They are Atlantic Exhibits 1 through 4 and 6 through 9. Number 5, I believe was withdrawn. But I think you will find that 1 through 4 and 6 through 9 were never formally offered in evidence.

Hearing Examiner Kolb: You are offering A-1 through -4 and -6 through -9.

Mr. Ballard: Yes, sir.

Hearing Examiner Kolb: Any objection?

3848 Mr. Kelaher: No objection.

Hearing Examiner Kolb: The documents will be received in evidence as Respondent's Exhibit A-1 through A-4 and A-6 through A-9.

(Whereupon, the documents, heretofore marked RESPONDENT'S EXHIBIT A-1 through A-4 and A-6 through A-9 for identification, were received in evidence.)

Mr. Ballard: Mr. Kelaher asked yesterday for a survey (handing to counsel).

Now, except for the 1952 Goodyear price data that was referred to yesterday, I have nothing further to go into the record, sir.

Mr. Kelaher: Off the record.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: On the record.

Mr. Mason and Mr. Correa, I have G-2 through -4 and G-6 which have not been offered. They are the lease Sherwood MacMasters. Sherwood Oil Company.

Mr. Correa: As I recall it, those exhibits have not been offered. They were marked for identification in connection with cross-examination. We are not offering them.

Hearing Examiner Kolb: Not offering them? Then, let the record show that Respondent's Exhibits G-2 through G-4 and G-6 have been withdrawn.

3849 Mr. Correa: They are marked for identification in connection with cross-examination.

Hearing Examiner Kolb: They have been withdrawn as exhibits. They are either offered or withdrawn.

Mr. Correa: We don't withdraw them. They are marked for identification.

Hearing Examiner Kolb: They are marked for identification regardless of whether you withdraw them or not. The record will show that they are withdrawn as far as the record is concerned.

Mr. Correa: I object to that.

Hearing Examiner Kolb: Now, at this point I suppose Mr. Correa's statement will be incorporated in the record, Mr. Ballard's moving speech will be incorporated in the record, and my ruling, and the record now shows that the case has been closed as to the Respondents.

Mr. Correa: If your Honor please, on behalf of Goodyear, as your Honor will observe, we have offered no evidence, no affirmative case, and our present disposition is not to offer any such case. We do this on the basis that the procedure which has been followed in respect of this case, that is, the case against Goodyear, and particularly in respect of the Shell-Goodyear contracts involved in this case and in another case pending before your Honor concurrently to which Goodyear is not a party, has had the effect of depriving Goodyear of procedural due process, and has hence been fatally defective, and while we do not believe the defect would be cured by any participation by us affirmatively in these proceedings, we feel that nevertheless we should not engage in any such participation.

Now, having said all that, there are two points, and only two points, which would interfere with our resting at this moment. The first point is that we would like, in the words Mr. Kelaher used when he closed his case, to see if there may be anything we have overlooked on a review of the record. This was Mr. Kelaher's request made at the hearing of December 12, 1957, and it was granted, and he advised counsel and the Examiner on January 10, 1958, that he had made his review of the record, and your Honor will recall that thereafter on January 14, 1958, there was

filed an order entitled "Order Closing Case for the Taking of Testimony in Support of the Complaint and Fixing Time Within Which to File Motions."

We ask similar treatment to that in any event. I say "in any event" because we further ask that the cases of Goodyear be held open until the conclusion of the Shell-Firestone case because although we do not think this defect which we have alluded to, procedural defect, can be remedied, there, of course, always exists the possibility that there will something occur in the further proceeding of that case that we can not now foresee which would 3851 make it possible to offer evidence in this case, particularly respecting that particular contract.

Mr. Ballard: Are you through?

Mr. Correa: Yes.

Mr. Ballard: May it please your Honor, I would like to join in that motion on behalf of Atlantic except, of course, where Mr. Correa asks that the case be held open as to Goodyear I would, of course, ask that it be held open as to Atlantic as well.

Mr. Kelaher: Are you finished?

Mr. Ballard: Yes, sir.

Mr. Kelaher: For the record I would like to object to any attempt to keep the record open, and I would like to state that my remarks on December 12, 1957 were in connection with the evidence which was introduced into the record on that date, a great deal of which, or some of which at least, was admitted subject to check because of the nature of the documents introduced, and it was not intended to refer to all of the evidence in all of the other hearings that preceded that particular hearing.

I would also like to point out that counsel for respondents have had since January 10, 1958 to prepare their defenses, and that would appear to be ample time, and

any continuance would unduly and unnecessarily delay the closing of this case.

3852 Hearing Examiner Kolb: I think all counsel undoubtedly know what is in this record. You have been getting daily copy, split copy, and everything else, and I see no occasion for holding the case open on the proposition that maybe something may happen in one of the other cases which might reflect on this case. Should that occur, you would always have an opportunity to come in on a motion to reopen if you can show and give a basis for it if that is correct.

I will be frank with you. I do not intend to immediately issue the decision in this case, but I do want to get the case closed and out of the way and proceed with the other cases and get them closed. I don't want to have them all hanging open. My position here is expedience in getting these matters closed and not carrying them on indefinitely, and I think with the right to make a motion to reopen, if such occasion should occur, would fully protect the respondents in this case under any circumstances. Don't you agree with me on that, Mr. Correa?

Mr. Correa: With great respect, I do not, if your Honor please.

Hearing Examiner Kolb: Then, I will have to overrule your motion.

I understand Mr. Kelaher wishes to put on some rebuttal testimony, and before that is put on I think that the case should be definitely closed, and for that additional 3853 reason I am insisting that the case be closed at this time and that Mr. Kelaher proceed with the rebuttal testimony.

3854 Hearing Examiner Kolb: Now, Mr. Kelaher has some rebuttal testimony, I believe.

Mr. Kelaher: In connection with the closing, I discussed

this matter with counsel for respondent Goodyear and there is a possibility which they want to check as to whether or not they may release the confidentiality of certain statistics.

Hearing Examiner Kolb: Well, that can be discussed off the record. I also understand that you have one exhibit, the financial figures for 1952. Is that—

Mr. Ballard: (Interposing.) Price.

Hearing Examiner Kolb: Price information for 1952 which you wish to compile and incorporate in the record as your exhibit?

Mr. Ballard: Yes.

Hearing Examiner Kolb: That will be Exhibit No. A-45, which will be submitted later and received in evidence.

Mr. Ballard: All right.

Your Honor, before Mr. Kelaher puts on his rebuttal witness, I would like to call for an offer of proof or a statement as to the nature of the rebuttal witness' testimony, because from what I have heard of it I do not think it is admissible as rebuttal testimony. I would like to discuss it while the witness is not in the room.

Mr. Kelaher: I think the question of relevancy 3855 and materiality will come up when he testifies.

Mr. Ballard: If your Honor wishes to defer your ruling, it is perfectly all right.

Hearing Examiner Kolb: Well, the question is whether or not it is rebuttal testimony. I would like for you to tell me whether it comes within the scope of the rebuttal testimony or not.

Mr. Kelaher: This testimony will be given by an ex-Atlantic dealer in the Baltimore district as rebuttal to statements made in this case by Atlantic representatives in the Baltimore district, as well as in other districts, concerning the freedom of choice on the part of Atlantic

dealers with respect to the brands of TBA they may purchase.

Mr. Ballard: Mr. Kelaher, do I understand from that description that this is to be a dealer who is to testify as to some form of coercion or some threat of, or actual lease cancellation for TBA reasons?

Mr. Kelaher: Well, I would say Yes.

Mr. Ballard: And do I understand that this dealer is in the Atlantic's Baltimore district?

Mr. Kelaher: He is in Atlantic's Baltimore district.

Mr. Ballard: I submit that during the history of the case Mr. Kelaher chose the Atlantic Baltimore district; he had hearings there; he submitted such evidence as he 3856 cared on exactly this same point; that Atlantic in its defense made what efforts it could to rebut Mr. Kelaher's evidence and the inferences that could be derived from it; and, in regular orderly procedure that issue should rest. I see no need to burden this record and your Honor's time, and the time of the various other people here, to hear another witness, and then a surrebuttal rebutting that. I am perfectly willing to do it—

Hearing Examiner Kolb: (Interposing.) I think that the testimony of the respondent probably covered about everything that could be covered in this proceeding. I think the testimony which Mr. Kelaher has explained he wishes to put in would probably be proper rebuttal.

Mr. Correa: I didn't understand whether you said proper or improper.

Hearing Examiner Kolb: Proper.

When did you first obtain this witness?

Mr. Kelaher: I didn't obtain this witness until after the witnesses for Atlantic had testified in this matter. In fact, I didn't contact this witness personally until last week, and the termination of his lease is current.

Mr. Ballard: September 1958?

Mr. Kelaher: September 1958.

Mr. Mason: It couldn't relate to the period involved in the other testimony.

3857 Mr. Kelaher: It does indeed. He was a dealer when these very practices were going on, at that very time.

Mr. Ballard: It is cumulative testimony. I don't know whether Mr. Kelaher expects to find more dealers. It seems to me he made his case on this point.

Hearing Examiner Kolb: I think it would come under rebuttal testimony. Even if it didn't, if I didn't allow it, the Commission, upon proper request, would order that the case be reopened.

Mr. Ballard: In that case, all right.

Mr. Correa: I think from the description of it it is not being offered against respondent Goodyear?

Mr. Kelaher: It is being offered with regard to it, but there may be a ruling in connection with it.

Mr. Correa: It seems to me to be a round-about way, and we move to strike it. However, I would like to subjoin to my objection the further objection that I have never in my experience heard of rebuttal testimony, rebuttal evidence being properly offered where no evidence has been offered to which it is purportedly a rebuttal. We have offered no evidence. And we object to any rebuttal evidence being offered to rebut nothing.

Hearing Examiner Kolb: Since he is an ex-Atlantic dealer, it would rebut the testimony of Atlantic, at any rate.

We will take a short recess.

3858 (A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

JAMES W. SIEWIERSKI, was called as a witness by the Commission for rebuttal testimony, and, after being properly and duly sworn, was examined and testified as follows:

Hearing Examiner Kolb: Will you give your name and address to the reporter, please?

The Witness: I live on Route 7, Old Philadelphia Road, Joppa, Maryland.

Hearing Examiner Kolb: And your name.

The Witness: James Walter Siewierski.

*Direct Examination by Mr. Kelaher.*

Q. Mr. Siewierski, did you at one time operate an Atlantic service station as a lessee dealer?

A. Yes, sir.

Q. And where was that station located?

A. On Route 40, in Edgewood.

Q. Edgewood, Maryland?

A. Yes, sir.

Q. And when did you begin your service station operation there?

3859 A. February 1, 1956.

Q. And how long did you remain in that station under a lease arrangement?

A. 'Til September 2, October 6 of 1958.

Q. Was your lease terminated by Atlantic?

A. Yes, sir.

Q. I will come back to that later, but I wanted to ask you a few questions.

Now, about the time you were in the station, did you have any prior experience as a service station operator?

A. No, sir; I did not.

Q. And had you been employed at the Edgewood Arsenal in Edgewood, Maryland, prior to that time?

A. Yes.

Q. For how long a period?

A. About 12½ years..

Q. And when you became an Atlantic lessee operator, how much money did you personally invest in the station?

A. About \$1600.

Q. Did you raise the fund yourself by mortgaging property?

A. Yes, sir. I had a thousand dollars coming to me from my retirement. I gave the Atlantic Company a mortgage of \$2,000, to get property, the balance of the money until that thousand dollars arrived. I had to wait a while for it.

Q. You received no loans from Atlantic?

3860 A. No money loans, no, sir.

Q. When you first went into the station, what brand of TBA did you begin to carry?

A. Why, I think everything that was in there was Firestone. I bought everything that was in there.

Q. You are referring to the stock of the outgoing dealer?

A. Yes, sir.

Q. And after that from whom did you purchase your TBA?

A. Oh, from different dealers. I bought some from Kunkle, Sola, Cleaning Supply. I bought some from Replacement Parts.

Q. Who did you purchase your tires from?

A. The biggest part of it came from Firestone.

Q. And batteries?

A. Batteries come from Firestone.

Q. And accessories?

A. Most of them come from Firestone.

Q. And what was the location of your Firestone supply point? Was that Baltimore?

A. Yes, sir. Yes, sir.

Q. Was that at 21st and North Howard Streets?

A. Howard Street, yes, sir.

Q. Did your station have a Firestone identification?

A. Yes, sir.

Q. A decal?

A. Yes, sir. It had it on the windows and a sign outside.

3861 Q. You had the outdoor pole sign?

A. Yes, sir.

Q. Now, did you originally carry Firestone fanbelts and hoses?

A. I carried them for a length of time, yes, sir.

Q. And was there—

A. (Interposing.) I had trouble with the sizes getting them to fit the cars. And I changed them to Gates.

Q. Gates fanbelts?

A. Gates fanbelts and hoses.

Q. About what time was that? In what month? What year?

A. I think that was somewhere along July or August of 1957.

Q. What was your problem with the Firestone fanbelts?

A. They just wouldn't fit. There would be a confusion getting them to fit the cars.

Q. Were any comments made by Atlantic personnel with reference to your purchase of Gates?

A. They said I shouldn't have done it.

Mr. Ballard: I move to strike unless the Atlantic personnel are around.

By Mr. Kelaher:

Q. Who was the Atlantic personnel?

A. Mr. Crumbaker.

Q. Was he your Atlantic salesman at that time?

A. Yes, sir.

3862 Q. Was he replaced insofar as your station was concerned?

A. Yes, sir.

Q. And what was his name?

A. Mr. Toy.

Q. Is Mr. Toy in the room today?

A. Yes, sir.

Q. How long did you continue to carry Firestone tires?

A. I had them all the time.

Q. Was there a time when you stocked Firestone tires only?

A. There was a time when I had Firestone, yes, sir.

Q. For how long a period was that?

A. Oh, from the time I went in there up until '58, I think. Yes, sir. Up until '58.

Q. About that time did you begin to stock another brand of tires?

A. Yes, sir.

Q. And what brand was that?

A. The Gates.

Q. And about what month? Would you state the events which led up to your taking on the Gates tires?

A. I had taken on the Gates, I think, in May.

Q. May of 1958?

A. 1958.

Q. Why did you take on the Gates tires?

A. Well, they sent them on consignment and they 3863 financed the tires, and that helped me a lot. I couldn't finance them. I couldn't buy enough. I wasn't financially strong enough to buy them and put them out on time. I thought it was a good deal and I had taken it up.

Q. So, you are saying that Gates sold you tires on consignment?

A. Yes, sir.

Q. And were you able to get them from Firestone on consignment?

A. I didn't get them from Firestone on consignment.

Q. Now, in or about May 1958 did your Atlantic salesman discuss the purchase of Firestone tires with you?

A. Yes, sir.

Q. And would you state what transpired at that time?

Hearing Examiner Kolb: Who?

Mr. Kelaher: I think we identified the salesman. It was Mr. Toy?

The Witness: Mr. Toy. About the Gates tires?

By Mr. Kelaher:

Q. No, about the Firestone.

A. He told me that Firestone had a deal and all Atlantic dealers had to buy Firestone products. In the meantime the Gates' people were approaching me—they had been there some time back—and they wanted me to take Gates tires. I was undecided what to do about it and they came along with this finance deal and I had taken it up.

3864 Mr. Toy didn't like it at all. So, he says that I had to dispose of them or I would be sorry for having them in there.

Q. Now, did Mr. Toy at the time he told you make any other statement with respect to a meeting—

A. (Interposing.) He came along, I think, a week later and he apologized for making that statement.

Q. In the meantime had he called on you with the Firestone representative?

A. Yes, sir.

Q. Concerning the purchase of Firestone tires?

A. Yes, sir.

Q. And at that time did you place an order with them for Firestone, too?

A. No, sir, we did not.

Q. Why didn't you?

A. I knew I was going to get the Gates tires in, and they insisted I give an order, and I didn't. I didn't buy anything.

Q. Was it after that Mr. Toy came around and apologized?

A. After he had made that statement about the meeting, he came by afterwards to apologize.

Q. Now, when did your first stock of Gates tires arrive?

A. I think it was—

Q. (Interposing.) Just the month.

A. The first of May. Along in the first week in May.

3865 Q. Who did you deal with in buying Gates tires?

A. Ross. He was the man assigned to me.

Q. Was he a direct factory representative?

A. Yes, sir.

Q. You were dealing directly with the Gates' representative?

A. Yes, sir.

Q. And your consignment tires came from the Gates Tire Company?

A. Yes, sir.

Q. At that time did they furnish you with any advertising materials for Gates tires?

A. They gave me three signs.

Q. Would you describe them for me?

A. One of them was a price sign—they had the sizes, the prices, and the discounts on them. It was about six foot tall, about four foot wide. And the other two were 5 by 18 inches wide. Just a small sign with Gates on it.

Q. What use did you make of the Gates' signs?

A. After?

Q. When you received the Gates' signs.

A. I posted them outside, put the price sign on, and nailed the two small signs. One at the lower right and one up next to the building.

Q. Were any comments made by Mr. Toy or any other Atlantic representative concerning those signs or Gates tires?

3866 A. Oh, yes, he said I shouldn't have them up there.

Q. Can you recall his exact words?

A. He says, "I don't know why you ever got those tires in there. You don't have to have those tires in there. I can't understand it, why you have to do it." I said, I was doing it for my own benefit. I think I was helping the business along by getting people with time to pay for it.

Mr. Ballard: I move to strike.

Hearing Examiner Kolb: He can give a conversation.

Mr. Ballard: Your Honor has ruled. But it is not responsive to the question asked.

Mr. Kelaher: It certainly is.

Hearing Examiner Kolb: It is the conversation had with Toy.

Mr. Ballard: Relating to signs? This seems to be something else.

By Mr. Kelaher:

Q. After that did Mr. Toy visit—after you took over on the Gates tires, how often did Mr. Toy visit your station?

A. Oh, he was there pretty near everyday. Sometimes twice a day.

Q. And do you recall any conversations you had with him during those visits?

A. Well, we never had good relations after that at no time.

Q. Do you recall any of the conversations you had  
3867 with him, any comments he made?

A. Well, it was all over tires, why I did that. I shouldn't have did it. The company men and the big wheels don't like it. And I will be sorry for it. So I told him I would just have to be sorry. That's all.

Q. Were any of these comments made in the presence of any of your employees?

A. Yes, sir.

Q. Could you name the employees?

A. George was around most of the time. George Orem. He was around most of the time.

Q. Now, after that time did Mr. Toy make any comments concerning the appearance and the condition of the station?

A. Oh, yes; He also had a complaint about that. The men weren't clean. The mechanic wasn't any good. He couldn't see why I had him there. I was a poor manager. The place was dirty. So, I told him I was doing the best I could do with it. I thought it was clean and everybody else thought it was, too. Of course, he was the only one that had complaints against it.

Q. Did you think it was necessary to maintain a mechanic at the station?

A. Yes, sir..

Q. Did you continue to maintain a mechanic at the station?

A. He left. And I didn't pick up another.

3868 Q. Did you continue to keep the Gates signs outside your station?

A. Yes, sir.

Q. Did any comments similar to those concerning the condition of your station, the appearance of your station, take place before the time you took on the Gates tires by Mr. Toy?

A. Mr. Toy wasn't on very much before that. Mr.

Crumbacker—I think it was in April when Mr. Toy took over.

Q. And up to the time—

A. (Interposing.) I never had any trouble at all with Mr. Crumbacker.

Q. Did you have any trouble with Mr. Toy before the time you took over the Gates tires?

A. Well, he was complaining about the curbs not being clean and the men dirty and why I kept certain ones on. I didn't think it was any of his affairs.

Q. After you took on the Gates tires did those complaints increase or decrease?

A. They increased. It was worse.

Q. Do you recall receiving a letter from Atlantic entitled "No Forcing" concerning TBA?

A. Yes, sir.

Q. Was that letter received when your lease arrived?

A. I think that was in the first lease that I—

Mr. Kelaher: Your Honor, I think reference has been made to the "No Forcing" letter a number of times. There were three: CX-150, 206 and 207.

It is stipulated between counsel the witness received a copy of CX-207, dated March 22, 1956, signed by W. R. Holland, manager of marketing, southern region.

By Mr. Kelaher:

Q. Now, you recall receiving the "No Forcing" letter, didn't you, Mr. Siewierski?

A. Yes, sir.

Q. And after Mr. Toy began to make remarks to you concerning your Gates tires, did you contact anyone in the Atlantic organization?

A. Yes, sir. I called Mr. Munch one time and I asked him, I told him I had so much trouble with Mr. Toy that I would rather get out, and he said he would have a talk with Mr. Toy.

Q. Did anything occur?

A. I never heard more of it.

Q. When did you first learn that your lease would not be renewed?

A. I didn't until I got a notice.

Mr. Kelaher: I would like to have a letter marked for identification as CX-485-A and the registered envelop as CX-485-B.

3870 (Whereupon, the documents referred to were marked Commission's Exhibit 485-A and -B for identification.)

By Mr. Kelaher:

Q. I show you CX-485 for identification, the lease termination—

Mr. Ballard: (Interposing.) Mr. Kelaher, before you continue your examination, I ask if you will please read the letter and then consider not referring to this as a lease termination when it is perfectly apparent from the letter that the lease expired by its terms and was simply not renewed, which I may say is the fact.

Mr. Kelaher: I am using "lease termination" in a different sense than you are at this time. We were getting to that.

Mr. Ballard: If you make that clear in the record, that will be all right with me.

By Mr. Kelaher:

Q. Mr. Siewierski, before I ask you questions about this letter, when did your lease terminate? Do you recall that?

A. The 30th of September, 19—

Q. (Interposing.) '58!

A. '58.

Q. And on or before that date had you received any notice that your lease would not be renewed?

A. Mr. Toy spoke to me sometime before that, I think it was in August, about a new contract.

3871 Q. And what did he say?

A. I told him to let me think it over a couple of days, whether I wanted a 24-hour or some other contract.

Q. I show you CX-485-A. That was the first notice that you had that your lease would not be renewed?

A. This was the only notice that I had.

Q. When was that received?

A. That was received the 2d of September.

Q. 1958?

A. Yes, sir.

Mr. Kelaher: And the Edgewood, Maryland postmark appearing on the reverse side is dated September 2, 1958, for the record.

By Mr. Kelaher:

Q. Were you ever given any reason by Mr. Toy as—strike that.

Did Mr. Toy or any other Atlantic representative ever indicate that your lease might not be renewed?

A. No, sir.

Q. Now, at that time did Mr. Toy—did you stay on at the station for any length of time after you received this?

A. Mr. Toy asked me to stay on six more days, up to the 6th of October.

Q. And you left the station at that time?

A. Yes, sir.

3872 Q. Did you have a check-out, as they call it, with the incoming dealer? Were you present with the incoming dealer and the Atlantic representative when you left the station?

A. Yes, sir.

Q. Who was present first?

A. At that time, the time of the closing out?

Q. The closing out.

A. Mr. Toy, Mr. Crumbacker, Mr. Munch was there a little while..

Q. Was the incoming dealer present?

A. Yes, he was there.

Q. What was his name?

A. Bennett.

Q. And what transpired at that time?

A. Well, he only bought certain things. He only bought —most of it, all the Firestone. But he didn't buy any recaps of any other kind or any other brand of tires. Just certain things that he wanted to buy.

\* \* \* \* \*  
3873 By Mr. Kelaher:

Q. Did the incoming dealer purchase your Gates tires?

A. No, sir.

Mr. Ballard: Your Honor, I don't think that is a fair inference. Mr. Kelaher has already elicited from the witness they were on consignment. He couldn't sell them to the incoming dealer. They were on consignment. I think that question is highly objectionable.

The Witness: These tires were left there. They are mine.

Mr. Ballard: Would you let his Honor rule on the point?

Hearing Examiner Kolb: As I understand, the Gates tires were on consignment?

The Witness: When they first came, yes, sir. But I got them paid out. What's left, they are mine.

Hearing Examiner Kolb: They are your tires at this time?

The Witness: Yes, sir.

Hearing Examiner Kolb: Objection overruled.

By Mr. Kelaher:

Q. Mr. Siewierski, did Mr. Toy and a Firestone representative ever call on you jointly?

A. Yes, sir.

Q. And who was the name of the Firestone representative?

3874 A. Mr. Scheck. Henry Scheck.

Q. Do you recall any conversations with him concerning the first display card?

A. Yes, sir.

Q. Would you describe that?

A. It used to set in the front of the building. They moved it to the side of the building where the wind would upset it. They moved it around there. And the wind came along the following day, and as ~~luck~~ would have it Mr. Toy was there, and it blew down. It blew all of the stuff off of it. All the stuff fell off of it, rolled all over the place. I told Mr. Toy, "I told you not to move it." But he moved it anyhow. He got in his car and went away.

Q. Now, what was the approximate gallonage of the station when you first entered the station per month?

A. I think it was somewhere around 3,000 gallons.

Q. What was your gallonage about the time you left the station?

A. Somewhere around from fifteen to seventeen thousand.

Q. So, you increased your gallonage while you were operating your station?

A. Yes, sir.

Q. At the time of your check-out was there some disagreement between you and Atlantic concerning the amount of money owed you?

3875 A. Yes, sir.

Q. Is there still disagreement?

A. We have no statement for it. We have got two checks. We don't have a statement saying what the money was for. What was bought was to be paid for by the—the stuff that Mr. Bennett bought Atlantic was to pay for that. And there was an over-collection that had been taken for sometime, and there was some money on deposit for a long while, and I think there was a mistake in the gasoline there. Some money in that. So, what has come back don't seem to be just right.

Q. What has come back from—

A. (Interposing.) Yes, sir, from Atlantic.

Q. From Atlantic?

A. Yes, sir. There are two checks, but I think there are some more due.

Q. You have obtained an attorney to take care of that?

A. Yes, sir.

Q. Did Mr. Bennett, the incoming dealer, keep any equipment that you had when you were there?

A. Yes, sir. I left some there. I didn't know where to put that stuff. The cigarette machines and so on. I give him the benefit of using them until I could get a place to move. After I got a place I had them moved. I left some more stuff there.

3876 Mr. Ballard: I object to this simply because I can't conceive that the cigarette machines are relevant to the case.

Hearing Examiner Kolb: Overruled.

The Witness: After it got so I could move them, I moved the machines and I sent for the other stuff. Some tanks, and some trash cans and buckets, and he told me he couldn't give them to the boys; so, I went up there to see him.

Mr. Ballard: Again, my objection. It is simply going on. It has nothing to do with the case. It has to do with his dealings with his successor dealer after the change.

Mr. Kelaher: It has to do with his attempt to get some of his property after he left.

Hearing Examiner Kolb: Overruled.

The Witness: He told me I would have to see Mr. Toy. I owed him some lights; so, I took the lights up to him. I thought I owed him three, he said five; so, I gave him five. He said he would give me the buckets, the things I had. I didn't have anything to put them in; so, they are still there.

By Mr. Kelaher:

Q. You say you can get them?

A. Yes, sir; I can get them.

3877 Mr. Correa: I have a motion to strike the totality of this testimony, but this last answer is so outrageous that I think I must make a special motion directed to that.

Mr. Ballard: I think it goes to the state of mind.

By Mr. Kelaher:

Q. Did you ever learn either directly or through your attorney why Atlantic, what reason Atlantic gave for terminating your lease?

Mr. Ballard: I object to that.

Hearing Examiner Kolb: Read that question, please.

(The reporter read the question commencing at line 6 of this page.)

Hearing Examiner Kolb: He may answer Yes or No.

By Mr. Kelaher:

Q. Can you answer that Yes or No?

A. Yes.

Q. Now, will you please tell us the reasons that were given you directly by Atlantic? Did Atlantic tell you directly why they terminated your lease, why your lease expired?

Mr. Ballard: I move that the witness be instructed not to volunteer.

3878 Mr. Kelaher: No further questions.

Mr. Ballard: At the risk of being subject to ridicule, may I have a minute or two? And it will not be longer than two.

Hearing Examiner Kolb: All right. Recess.

(A short recess was taken.)

Hearing Examiner Kolb: The hearing will be in order.

Mr. Ballard: I have no cross-examination of this witness.

Mr. Correa: In that event I will move on behalf of respondent Goodyear to strike the testimony of this witness as against the respondent Goodyear.

Hearing Examiner Kolb: Do you want this witness anymore?

Mr. Kelaher: No.

Hearing Examiner Kolb: You are excused. Thank you.  
(The witness was excused.)

Mr. Kelaher: By agreement of counsel a photostated copy will be substituted for CX-485-A and -B by agreement of counsel.

I now offer it in evidence.

Mr. Ballard: No objection.

Hearing Examiner Kolb: It will be received in evidence as Commission's Exhibit 485-A and -B.

(Whereupon, the documents, heretofore marked COMMISSION'S EXHIBIT 485-A and -B for identification, were received in evidence.)

Hearing Examiner Kolb: Now, Mr. Correa, you have a motion?

Mr. Correa: I move to strike the testimony of the last witness as against the respondent Goodyear on the usual

grounds that the testimony does not involve in anyway respondent Goodyear, and on the additional ground that in any event it is improper rebuttal as to the respondent Goodyear.

Hearing Examiner Kolb: The motion will be sustained. The testimony will be stricken as to the Goodyear Tire and Rubber Company. It will remain as to Atlantic.

Mr. Ballard: May I call a witness in surrebuttal, your Honor?

Hearing Examiner Kolb: Yes.

Mr. Ballard: Mr. Hathaway.

HOLLAND M. HATHAWAY, was recalled as a witness on behalf of The Atlantic Refining Company for surrebuttal testimony, and, having been previously duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Ballard.*

Q. Would you give your name to the reporter?

3880 A. Holland M. Hathaway.

Q. Mr. Hathaway, you have been previously sworn?

A. Yes, sir.

Q. And you have given your address to the reporter at a previous hearing?

A. Yes, sir.

Q. Mr. Hathaway, you were in this hearing room during the testimony of Mr. Siewierski, the witness who just testified, were you not?

A. Yes, sir.

Q. Referring to Commission's Exhibit 485-A, I see the statement that Mr. Siewierski's lease expired or was to expire on September 30, 1958; is that correct?

A. That's correct.

Q. Under Atlantic's lease policy, was it your duty to recommend renewal or non-renewal of that lease?

A. Yes, sir.

Q. If it had been renewed, what would have been the terms of the lease?

A. Three years.

Q. What recommendation did you make in regard to renewal or non-renewal?

A. I recommended that it not be renewed.

Q. Would you give us your reasons for that recommendation?

A. Yes, sir. The primary reason was because of the financial condition of the dealer.

And in my opinion the dealer would not have survived the winter without going completely bankrupt.

Q. Had this dealer been purchasing his gas from The Atlantic Refining Company on consignment, getting his supply of gasoline on consignment?

A. His gasoline was on consignment. Yes, sir.

Q. During the time he was an Atlantic dealer, did he ever pay Atlantic for a tank full of gasoline when he got it?

A. No, he was on consignment continually.

Q. Under its procedures was Atlantic supplementing this dealer's income from his station?

A. Yes, sir, from the very beginning.

Q. In the last year of his operation, taking that for example, was there any month where Atlantic did not supplement this dealer's income?

Mr. Kelaher: What was that question? Read that question.

(The reporter read the question commencing at line 13 of this page.)

The Witness: I believe there was one month.

By Mr. Ballard:

Q. In that month the dealer made a reasonable minimum and did not require supplementation?

A. Yes.

Q. Had you received reports as to the dealer's 3883 housekeeping and cleanliness?

A. Continually, yes, sir.

Q. Were they adverse reports?

A. They were not good.

Q. Are the reasons you have given the principal reasons which motivated your decision not to recommend lease renewal?

A. Yes, sir.

Q. Did the fact that this dealer was handling Gates tires on consignment or in any other way—

Mr. Kelaher: (Interposing.) Objection, your Honor.

Mr. Ballard: I will withdraw the question.

By Mr. Ballard:

Q. Did the fact that this dealer was handling Gates tires have anything to do with your decision not to recommend renewal?

A. It had nothing to do with it whatsoever.

Mr. Ballard: Cross-examine.

Hearing Examiner Kolb: Let me ask a question first. What do you mean by supplementing the dealer's income?

Mr. Ballard: Let's have Mr. Hathaway answer that. Would you explain that to Judge Kolb?

The Witness: Well, it is a method we have for certain dealers and stations to help them get underway, so to speak, to build up the station, to a point where they can

survive and make money, and while they are building 3884 up to that point, we help them by contributing to their profits and money until such a time as they are able to go on their own.

Hearing Examiner Kolb: Financial assistance, a loan or a gift or what?

The Witness: It is a financial payment each month. It's not a loan. I guess you could call it a gift.

Hearing Examiner Kolb: All right.

*Cross-Examination by Mr. Kelaher.*

Q. Do you have a copy of Mr. Siewierski's extension agreement, dated September 24, 1957, with you?

A. No, sir.

Mr. Ballard: I think we have a copy.

(The document was handed to counsel for the Commission.)

Mr. Kelaher: Excuse me.

By Mr. Kelaher:

Q. Mr. Hathaway, I note in your letter from Mr. Holland to Mr. Siewierski, CX-485-A, and I quote: "Although this lease requires no prior notice from Atlantic, we are nevertheless giving you thirty days notice that the lease will not be renewed at its expiration date of September 30, 1958."

At that time Mr. Siewierski's lease was what? I show you this, B-31917-56.

Mr. Kelaher: I am calling his attention to the type 3885 of lease that Mr. Siewierski had, because he said he didn't recall.

By Mr. Kelaher:

Q. I am asking now, is it Atlantic policy not to give notice to dealers when their leases are terminated?

A. I don't quite follow you, Mr. Kelaher.

Q. This is a letter to Mr. Siewierski in which it states: "Although this lease requires no prior notice from Atlan-

tic ••• etc. I am asking you, is that a typical letter sent to a lessee concerning the termination of his lease?

A. This does give 30 days notice.

Q. It is stated in the letter that no prior notice is required. I am asking you, as a matter of Atlantic policy, is Atlantic required to give 30 days notice, or can they terminate a lease without notice?

Mr. Ballard: I object, your Honor: The lease speaks for itself.

Hearing Examiner Kolb: What does the lease say? Does the lease provide for notice or not?

Mr. Kelaher: I am asking what policy.

Hearing Examiner Kolb: No, no. What the lease specifies.

Mr. Ballard: The lease is in the record.

Mr. Kelaher: I haven't had a chance to check it. Sixty days.

3886 Mr. Ballard: I beg your pardon! Would you look at the lease? Read it.

Mr. Kelaher: Clause 2: "The term of this lease shall begin on the 'blank' day of 'blank', 'blank', and end on the 'blank' day of 'blank', 'blank', subject, however, in the event such term is longer than one year, to termination by lessee at any annual anniversary date by giving at least sixty days advance written notice to lessor."

Mr. Ballard: That's what the lease provides, your Honor. In the event it is a three-year lease it can be terminated on any anniversary date. Of course, this, sir, is a one-year lease; as my associates have pointed out to me.

Mr. Kelaher: Do I take it that counsel's remarks mean that without checking the lease form minutely at this point there is no provision of notice to a lessee dealer if Atlantic desires to terminate the lease?

Mr. Ballard: Mr. Kelaher, the lease is a lease for a

term, and it is not necessary to notify the dealer at the end of the term. The end of the term is stated in the date.

Hearing Examiner Kolb: What difference does it make?

By Mr. Kelaher:

Q. With respect to the consignment of gasoline to Mr. Siewierski, isn't it a fact that the first tankload of gasoline was consigned and, thereafter, he paid for the gasoline when it was delivered to replace whatever was sold each month?

3887 A. May I explain it to you, Mr. Kelaher?

Q. Yes.

A. The first load of gasoline is on consignment. From that time on what the dealer sells he holds the money for that and we replenish the tank in that amount, and he pays then for what he has sold, after he has sold it.

Q. That was the import of my question. So, he was making payments to you monthly from the time he came into the station except for the payment of the first load of gasoline in that station?

A. After he—

Q. (Interposing.) After he sold the first tankload, he was making payments every month?

A. After he sold our product, yes, sir.

Q. Are you aware that Mr. Siewierski is now a lessee of a Sinclair station in Edgewood, Maryland?

A. I heard that either yesterday or the day before.

Mr. Kelaher: No further questions.

Mr. Ballard: I have no questions, your Honor.

Hearing Examiner Kolb: Thank you, you are excused.

(Witness excused.)

Hearing Examiner Kolb: Anything further?

Mr. Ballard: No, I have nothing further.

Hearing Examiner Kolb: The case is closed for the taking of testimony.

3888 How much time do you want to file proposed findings?

Mr. Kelaher: Your Honor, I do have other cases pending. I have an oral argument coming up in December. I also have several cases which we are presently conferring with respondent's counsel on concerning possible stipulations, and I think I would make a real effort to have findings in in a supporting brief by February 1, as a target date, if that is agreeable.

Hearing Examiner Kolb: That would be two months and a half. Well, I will enter an order that Mr. Kelaher can file proposed findings and such briefs as he may wish to do by February 1, 1959.

Counsel for the respondent, will 30 days be sufficient?

Mr. Ballard: I would prefer 60. If Mr. Kelaher gets 60.

Hearing Examiner Kolb: Off the record.

(Discussion off the record.)

Hearing Examiner Kolb: I will give you to April 1 for respondents to file their proposed findings and brief.

Mr. Ballard: Thank you, very much, your Honor.

Hearing Examiner Kolb: And I guess I had better make a provision if Mr. Kelaher wishes to file a reply brief. I will allow 30 days for that.

The hearing is adjourned.

3889 (Whereupon, at 4:50 p.m. o'clock, the hearing in the above entitled matter was adjourned.)

(Caption—6486)

**STIPULATION RE GOODYEAR 1952 PRICES.**

Counsel for respondent The Atlantic Refining Company ("Atlantic") and counsel supporting the Complaint stipulate that the exhibits accompanying this stipulation may be received in evidence in this proceeding as Exhibits RXA-45 through RXA-61. Such counsel further stipulate and agree that if appropriate officers and employees of The Goodyear Tire & Rubber Company were called as witnesses by counsel for Atlantic, such witnesses would testify as follows, and that the following may be accepted by the Commission for purposes of its determination and order herein as if such witnesses had so testified and in lieu of such testimony:

1. The prices shown in Exhibits RXA-45 through RXA-61 were in effect January 1, 1952 and for varying periods thereafter.

421 2. The 1952 price lists comprising Exhibits RXA-45 through RXA-61 correspond with the 1957 price lists comprising Exhibits CX-229 through CX-245 as follows, such correspondence being evidenced by the identifying Goodyear form numbers shown below:

Goodyear Form Number	1952 Goodyear Prices	1957 Goodyear Prices
B 198	RXA-45	CX-229
B 176	RXA-46	(1)
B 224	RXA-47	CX-230
B 225	(2)	CX-231
B 199	RXA-48	CX-232
B 196	RXA-49	(1)
B 338	RXA-50	(1)

Number	Prices	Prices
B 164	(2)	CX-233
B 170	RXA-51	CX-234
B 167	RXA-52	CX-235
B 383	RXA-53	CX-236
B 168	RXA-54	(3)
B 256	RXA-55	CX-237
B 272	RXA-56	CX-238
B 182	DXA-57 (4)	CX-239
B 304, 308, 309, 314, 332, 333, 334 and 337	RXA-58 (5)	CX-240A-H (5)
B 222	RXA-59	(3)
B 166	RXA-60	CX-241
M 734	RXA-61 (6)	CX-242-245 (6)

- (1) No corresponding price list for 1957. All automobile tire and tube prices for 1957 are contained in CX-229.
- (2) No corresponding price list for 1952.
- (3) No corresponding price list for 1957.
- (4) List entitled "Camelback & Repair Material." No form number shown.
- (5) RXA-58 comprises Form B 309 only, showing in one document prices in effect for each class of customer defined in B. 166 (RXA-60) instead of furnishing a separate price list for each such class. Separate price lists were not used for Goodyear's Western Division on January 1, 1952.
- (6) RXA-61 shows "suggested retail," "dealer" and "distributor" prices, which were the price classifications in effect at January 1, 1952, in one document instead of furnishing separate price lists for each level. The 1957 price list most nearly corresponding to the "dealer" prices in RXA-61 was CX-244.

2336      *Stipulation re Goodyear 1952 Prices.*

422    3. In 1952 the price categories of Goodyear passenger tires were as follows:

Price Category	Brand
Premium line	(1) Double Eagle Super-Cushion (nylon)
	(2) Double Eagle Super-Cushion (rayon)
First line	(1) Deluxe Super-Cushion (also sold for original equipment purposes)
	(2) Deluxe
Second line	(1) Marathon Super-Cushion
	(2) Marathon

The foregoing price categories correspond to the 1957 categories described at T 481.

4. The principal original equipment passenger tire in the Goodyear line in 1952 was the black, rayon, 4-ply Deluxe Super-Cushion tire (tube type), size 6.70-15, and in 1957 was the black, rayon, 4-ply Custom Super-Cushion (tubeless), size 7.50-14.

Frederic J. Ballard, Jr.

*Counsel for The Atlantic Refining Company.*

James L. Kelaher,

*Counsel Supporting the Complaint.*

Dated: January 26, 1959.

